



# GILA RIVER INDIAN COMMUNITY

## SACATON, AZ 85147

### ORDINANCE GR-002-19

**THE GILA RIVER INDIAN COMMUNITY COUNCIL HEREBY AMENDS THE GILA RIVER INDIAN COMMUNITY CODE BY RESCINDING ORDINANCE GR-10-13 (TAXATION) AND REPLACING IT WITH THE 2019 TAXATION ORDINANCE, TO BE CODIFIED AT TITLE 13 OF THE GILA RIVER INDIAN COMMUNITY CODE.**

**WHEREAS,** the Gila River Indian Community Council (the “Community Council”) is the governing body of the Gila River Indian Community (the “Community”); and

**WHEREAS,** the Community Council is empowered by Article XV, Sections 1(a)16 and 1(b)(3) of the Constitution and Bylaws of the Gila River Indian Community (approved March 17, 1960) (the “Constitution”), to levy dues, fees and taxes; and

**WHEREAS,** on November 20, 2013, the Community Council enacted Ordinance GR-10-13, which adopted a revised Title 13 of the Gila River Indian Community Code (“Title 13”) and rescinded the then-existing Title 13; and

**WHEREAS,** in the intervening years, the Community Council has authorized a number of amendments to Title 13, addressing such items as the retail sale of tangible property, business licenses, and the hotel/motel tax; and

**WHEREAS,** the Office of Treasurer has ceased to issue permanent business licenses; and

**WHEREAS,** in the intervening years, a substantial number of changes to Title 13 have been proposed in addition to those aforementioned amendments, including changes to the definitions, business licenses, non-residential/commercial rentals, among others; and

**WHEREAS,** the proposed changes are intended to maximize all possible revenue for the benefit of the Community and its members; and

**WHEREAS,** the sheer scope of the proposed amendments to Title 13 make rescission of the current Title 13 and implementation of a new Title 13 necessary; and

**WHEREAS,** the Legislative and Government & Management Standing Committees have reviewed the attached Title 13 and recommend its approval.

**NOW, THEREFORE, BE IT ENACTED**, that the Community Council hereby rescinds in its entirety GR-10-13 and amendments which enacted the current Title 13 of the Gila River Indian Community Code, and hereby approves and adopts the attached 2019 Taxation Ordinance, to be codified as Title 13 of the Gila River Indian Code.

**BE IT FURTHER ENACTED**, the Community Council hereby revokes all permanent business licenses as of January 31, 2019;

**BE IT FURTHER ENACTED**, that the attached 2019 Taxation Ordinance shall become effective the 1<sup>st</sup> of the month immediately following the approval by the Secretary of the Interior (the "Effective Day") as set forth in Article XV, Section 2 of the constitution of the Gila River Indian Community, and that the rescission of Ordinance GR-10-13 and amendments thereto shall become effective at the same time as the attached 2019 Taxation Ordinance becomes effective;

**BE IT FURTHER ENACTED**, that all taxation ordinances and codifications adopted prior to the Effective Date are hereby repealed; however, this repeal shall not affect the validity of any actions undertaken under previous laws and ordinances;

**BE IT FURTHER ENACTED**, that failure to use new Title 13 section numbers of the 2019 Gila River Indian Community Code, as amended, shall not be grounds for dismissal of any civil administrative action or similar matter, nor of any penalty, lien or levy imposed pursuant to the 2019 Taxation Ordinance;

**BE IT FINALLY ENACTED**, that the Governor, or in the Governor's absence, the Lieutenant Governor, is authorized to execute all documents as may be necessary to carry out the intent of this ordinance.

**CERTIFICATION**

Pursuant to authority contained in Article XV, Section 1 (a) (7), (9), (16), (18),(19), (b) (3),(10) and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960 and approved by the Secretary of the Interior on March 17, 1960, the foregoing Ordinance was adopted on the 16<sup>th</sup> day of January, 2019, at a Regular Community Council Meeting held in District 3, Sacaton, AZ, at which a quorum of 14 members were present by a vote of: 13 FOR; 1 OPPOSE; 0 ABSTAIN; 3 ABSENT; 0 VACANCY.

GILA RIVER INDIAN COMMUNITY

  
GOVERNOR

ATTEST:

  
COMMUNITY COUNCIL SECRETARY



RECEIVED PIMA AGENCY

JAN 28 2019

BUREAU OF INDIAN AFFAIRS  
SACATON, ARIZONA

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## TITLE 13

### BUSINESS LICENSES AND TAXATION

#### CHAPTER 1. DEFINITIONS

##### 13.101. Definitions.

A. Whenever used in this title, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof. When used in a context consistent with the definition of a listed-defined term, the term shall have the meaning defined below, whether capitalized or otherwise.

1. *A.R.S.* shall mean the Arizona Revised Statutes.
2. *Business or trade* includes all activities or acts engaged in or caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, but not casual activities or sales. Business or trade shall include, but not be limited to:
  - a. A manufacturing or industrial concern.
  - b. Wholesale merchants.
  - c. Retail merchants.
  - d. Automobile service stations or garages.
  - e. A cotton gin or dairy enterprise.
  - f. A farming or agricultural operation making use of more than two hundred acres of land within the Gila River Indian Reservation.
  - g. A concern providing crop dusting, harvesting, planting or similar services to farming or agricultural operations.
  - h. Retailers, wholesalers, manufacturers or any other business not located or having a place of business on the Reservation, but making sales and deliveries on the Reservation.
  - i. Any enterprise or amusement park, sports arena or center which is open to the public.
  - j. A motel, hotel, rooming house, trailer court or park, mobile home park, or recreational vehicle park.

- k. A bar, cocktail lounge, restaurant, cafeteria, dining room, lunch counter, lunchroom, snack bar, soda fountain, catering service or similar establishment where articles of food or drink are sold for consumption on or off the premises.
  - l. Traveling merchants, food sellers, peddlers, itinerant vendors or any retail business not having an established place of business.
  - m. Construction companies, contractors, repair services, or installation services.
  - n. Livestock operations.
  - o. An airport.
  - p. Businesses operating as "Not-for-Profit".
3. *Casual Activity* shall mean an activity or sale which occurs when a person engages in an isolated transaction that is not conducted with such frequency or is not one of a series of activities as to be sufficient to consider the person as regularly conducting the activity.
  4. *Community* shall mean the Gila River Indian Community, a federally recognized Indian tribe organized under the Indian Reorganization Act, 48 Stat. 984, 25 U.S.C. § 461 et seq.
  5. *Construction contracting* shall mean engaging in business as a construction contractor.
  6. *Construction contractor* shall mean any person who undertakes to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, irrigation system, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or works in connection therewith, and includes subcontractors, specialty contractors and developers. For all purposes of taxation or deductions, this definition shall govern without regard to whether or not the contractor is acting in fulfillment of a contract.
  7. *Council* shall mean the Gila River Indian Community Council.
  8. *Direct Sales* shall mean the sales or solicitation of sales of company products that are sold or offered for sale primarily at home hosted events and/or parties by independent representatives of the company.
  9. *Engaging* when used with reference to engaging or continuing in business includes the exercise of corporate or franchise powers.



10. *Gross income* shall mean the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both, and without any deduction on account of losses.
11. *Gross proceeds of sale* shall mean the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind, or losses, but cash discounts allowed and taken on sale shall not be included as gross income.
12. *Gross income* or *gross proceeds of sale* shall not be construed to include goods, wares or merchandise, or value thereof, returned by customers when the sale price is refunded either in cash or by credit, nor the sale of any article accepted as part payment on any new article sold, if and when the full sale price of the new article is included in "gross income" or the "gross proceeds of sale."
13. *Member* shall mean an enrolled member of the Community.
14. *Owner-builder* shall mean a person who acts as a contractor in constructing any improvement upon real property, such property being held by such person for his own use or for rental purposes.
15. *Person* includes an individual, officer, agent, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust or any other entity, group or combination acting as a unit, including any government entity, and the plural as well as the singular number.
16. *Prime contractor* is a contractor whom the owner or lessee of the property being improved treats as being responsible for administration, construction and completion of the improvement. For purposes of this definition, a person who, for either a fixed sum, price, fee, percentage bonus or other compensation other than actual wages, undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, supervise the construction of the improvement, or coordinate the construction of the improvement, or both, is a *prime contractor*, unless such supervisor or coordinator demonstrates, to the Community's satisfaction, that another contractor is, in fact, the *prime contractor* for the improvement.
17. *Reservation* shall mean any land within the exterior boundaries of the Gila River Indian Reservation, any land outside such boundaries held in trust for the Community or any of its members by the United States, and any other land constituting "Indian country" within the meaning of 18 U.S.C. § 1151 or any successor provision.

18. “*Sale* shall mean any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, of tangible personal property, for consideration, and includes:
- a. Any transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.
  - b. The fabrication of tangible personal property for consumers who furnish either directly or indirectly the materials used in the fabrication work, and the furnishing, preparing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property.
19. *Sale at retail or retail sale* shall mean a sale for any purpose other than resale in the form of tangible personal property.
20. *Special Event* shall mean an activity requiring a special event license such as a fair, carnival, rodeo, trade show, sporting event or similar type event which lasts no longer than five consecutive days where vendor participation is included. **Included in the definition of Special Event is a party or other type of gathering for the purpose of or which includes the presentation of licensed products, offered for sale by a Direct Sales representative (e.g. Avon, Pampered Chef or Tupperware).**
21. *Subcontractor* shall mean a construction contract performing work for a construction contract who has provided the subcontract with a written declaration that the construction contractor is liable for the tax for the project. A subcontract may use Arizona Form 5005 - Prime Contractor’s Exemption Certificate to make this declaration.
22. *Tangible personal property* shall mean personal property which may be seen, weighed, measured, felt, touched or is in any other manner perceptible to the senses. Stocks, bonds and other securities are intangible property, not tangible property. Software, digital media whether provided by disc, flash drive or downloaded are considered tangible personal property.
23. *Taxpayer* shall mean any person liable for any tax imposed by this title.
24. *Treasurer* shall mean the Treasurer of the Community or such person as the Council designates to carry out the duties of the Treasurer, and may include such subordinate official(s) as the Treasurer designates to carry out any provisions of this title.

## CHAPTER 2. BUSINESS LICENSES

### 13.201. Business Licenses.

A. Any person conducting or engaged in any business or trade on the Reservation must obtain a license from the Community and pay the license fee provided in Section 13.207. In addition, any person conducting or engaged in any business or trade with the Community (including any department, agency, entity or enterprise or any members of the Community) from a physical location outside of the Reservation must likewise obtain a license from the Community and pay the license fee provided in Section 13.207. "Off-duty" Community Public Safety staff are exempt from this provision when employed by various entities for security purposes. The following examples illustrate some situations in which a license must be obtained even if the licensee does not maintain a business location on the Reservation:

1. A door-to-door salesman.
2. Any contractor doing business with the Community, any department, agency, entity or enterprise or any members of the Community whether or not the contractor has visited the Reservation during the course of performance of the contract.
3. Any lawyer, physician, dentist, therapist, or other consultant without a contract who visits the Reservation during the course of performing services for the Community, any department, agency, entity or enterprise or any members of the Community.
4. A Direct Sales representative
5. Any Vendor who provides services at privately hosted events (e.g. play equipment for children, dj's, bands, petting zoos, pony rides and clowns).

B. The license shall authorize the licensee to transact the business, trade or activity described in the license application in the locality designated in the license application. If the licensee engages in business or trade at more than one location within the Reservation, a separate license shall be obtained for each location where the business or trade is conducted. Licenses are not transferable. A licensee may designate the location as "Reservation Wide", if the business is of a type generally not stationary (e.g. food vendors, contractors, exterminators).

### **13.202. Types and Terms of Business Licenses.**

A. Annual Business License: Except as provided in Section 13.207.B, an annual business license shall be valid for a period of one year, and a renewal of such a license shall be valid for a period of one year from the expiration of the previous license. If a period of more than one year has elapsed from the expiration of a license to the request for renewal, a new license number will be issued.

B. Enrolled Member Business License: A license issued to an enrolled or to a business owned and operation by one or more enrolled Members shall be valid for a period of two years, and a renewal of such a license shall be valid for a period of two years from the expiration of the previous license. If a period of more than two calendar years has elapsed from the expiration of a license to the request for renewal, a new license number shall be issued.

C. Special Event Business License: A special event business license shall be valid for a period of five consecutive days. A person may apply for and be issued multiple special event licenses in a 12 month period. The purchase of any special event license can not be credited toward the purchase of an annual license. A Special Event License application must specify the date(s) the license will be effective.

### **13.203. Application and Issuance.**

A. An application for a business license shall be submitted in writing to the Treasurer on a form approved by the Treasurer. The application shall include:

1. The name, address, phone number, and email address of the owner or owners of the business or trade.
2. The trade name or "doing business as" name if any is to be used by the business or trade.
3. A complete description of the business, trade or type of activity being conducted on the Reservation.
4. The physical location of the business or trade, or activity being conducted.
5. The name(s) of the person(s) who will have the authority to communicate with the Business License and Tax office.
6. The business owner's consent to liability for and payment of all applicable taxes imposed under this Title 13, and as it may be amended by the Council in the future.
7. Construction contractors must submit a copy of their liability insurance naming the Community as an additional insured and a copy of their Arizona Registrar of Contractor's license with the business license application.

B. Full payment of the business license fee provided for under Section 13.207 shall be made at the time of submittal. A check or money order payable to the Community, shall accompany each mailed application. Applications presented in person to the Cashier may be paid by cash, check, money order, or credit/debit card. When the applicant applies via the internet, payment for the license will be accepted by credit card, debit card or similar payment method.

C. Upon receipt of each application the Treasurer shall conduct such investigation of the applicant's or owners' business reputation and moral character as he deems necessary for the protection of the public good. If as a result of such investigation, the applicant's (or owner's) character or business responsibility is found to be unsatisfactory, the Treasurer shall notify the applicant that the application is disapproved, that no license will be issued, and that a refund of 50% of the license fee will be made. If the character and business responsibility of the applicant (or owner) is found to be satisfactory, the Treasurer shall endorse and deliver to the applicant his license.

D. The issuance of any business license is contingent on the business being current with regard to the filing of required transaction privilege tax returns and payment of any outstanding taxes, interest or penalties due to the Community.

E. The submittal of the license by mail, in person or electronically is not deemed as authorization to conduct business within the Reservation. Only upon the receipt of a Community business license with an effective date of operation is a business properly authorized to do business within the Reservation.

F. Upon approval of the application by the Treasurer and payment of the fee, a business license shall be issued to the applicant on a form approved by the Treasurer. The business license shall bear the signature of the Treasurer or his authorized representative. The license shall specifically describe the business or trade to be conducted, the name of the owner or owners or the business or trade, and the location at which the business or trade will be conducted.

#### **13.204. Estimate of Business Receipts as Basis for Tax.**

All applicants for a business license or renewal of a business license shall submit an estimate of the probable amount of taxable business which the applicant and/or business owner will transact during each of the next succeeding three months, and during the term of the license. The statement shall be based on the amount of business transacted by such person in the preceding months, if any.

#### **13.205. Transacting Business without License.**

A. A person conducting or engaging in any business on the Reservation without a valid business license shall be notified of his liability for the business license fee and all applicable taxes and shall be sent a notice of assessment for the amount due. The notice shall inform the party that no further business may be conducted on the Reservation unless the party obtains a business license.

B. In addition to the fees due pursuant to Section 13.205.A, if any person who continues to conduct or engage in a business or trade without a business license shall be assessed, a penalty of \$500.

1. In addition to the monetary penalty provided for in Section 13.205.B, the person conducting or engaging in any business or trade without a valid business license will be prohibited from obtaining a business license for a period of one year from the date notice was issued.

C. If a person conducting business without a license is on land leased to a business required to have a license pursuant to this ordinance, a penalty of \$500 will be imposed on the lessee, per person conducting business without a business license, and per occurrence.

#### **13.206. Complying with Laws and Regulations.**

Any person conducting or engaging in any business on the Reservation shall comply with all laws and regulations of the Community.

**13.207. License Fees.**

Every person or business issued or reissued a business license shall pay a license fee as follows:

- A. Annual Business License: \$150.
  - 1. Businesses and individuals required to hold a business license for the purpose of obtaining and/or maintaining a gaming license may pay for their business license two years at a time.
- B. Enrolled Member Business License \$5
  - 1. Community Members and Community owned businesses may pay for their business license two years at a time.
  - 2. Special Event Business License: \$50.00

**13.208. Licenses for Regulated Industry or Business.**

A. If this Section 13.208 or any other ordinance or law of the Community requires a business licensee under this chapter to obtain a license or permit for regulatory purposes, no license under this chapter shall be issued or permitted to continue in force until the business has obtained the required license or permit.

- 1. Any business providing medical transportation within the Community is required to obtain a permit from the Gila River Health Care Corporation to provide medical transportation prior to issuance or continuance of an business license under Section 13.208.A.
  - a. All businesses providing medical transportation within the Community are required to obtain a permit from the Gila River Health Care Corporation prior to the issuance or continuance of a business license.
  - b. The requirements of this section do not apply to the Community departments authorized to provide transportation in the regular course and scope of business, and do not apply when transporting an individual in an emergency situation.
- 2. Food vendors are required to obtain a permit from the Community Environmental Health Services, in accordance with Section 17.104 of the Community Code, and to include a copy of the permit with their business license application or renewal.

3. Pest control vendors, exterminators, and beekeepers must obtain a permit from the Community Department of Environmental Quality and submit a copy of the permit with their business license application or renewal.

B. Failure to comply with this section may result in revocation of business license and permit, and/or civil penalties not to exceed \$5,000 per incident.

### **13.209. Revocation of License.**

A. Licenses issued under the provisions of this chapter may be revoked by the Treasurer after notice and hearing, for any of the following causes:

1. Fraud, misrepresentation or incorrect statement contained in the application for license.
2. Fraud, misrepresentation or incorrect statement made in the course of business.
3. Any violation of this ordinance or any other law or ordinance of the Community.
4. Conviction of any crime.
5. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
6. Unconscionable and other unfair business practices.
7. Abandonment of the business for which the license was issued.

B. Notice of the hearing for revocation of a license shall be given by the Treasurer in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such Notice shall be mailed to the licensee at his last known address at least 48 hours prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least 48 hours prior to the date set for hearing.

## **CHAPTER 3. TRANSACTION PRIVILEGE TAXES**

### **13.301. Transaction Privilege Taxes.**

There is levied and there shall be collected a transaction privilege tax measured by the amount or volume of business transacted by persons on account of their activities on the Reservation, and to be measured by the gross proceeds of sales, gross income, or gross receipts of persons on such account, and all of said gross proceeds of sale, gross income, or gross receipts shall be used to measure the tax in accordance with the provisions in this chapter. For purposes of this chapter, the total amount of gross proceeds of sale, gross income, or gross receipts shall be

deemed to be the amount received, exclusive of the taxes imposed by this chapter. A person who imposes an added charge to cover the tax being levied by this chapter or which is identified as being imposed to cover the privilege tax shall not remit less than the amount so collected to the Treasurer.

### **13.302. General Retail Sales.**

A. The tax rate shall be an amount equal to 6% of the gross proceeds of sale or gross income of the business of selling, leasing, renting or licensing any tangible personal property whatsoever at retail.

B. The following sales and gross proceeds are exempt from this general retail sales levy:

1. Sales of food for human consumption at home provided, however, that this exemption does not include sales of prepared food, which sales are taxable.
2. Gross proceeds or gross income of activities specifically subject to tax under other sections in this chapter unless otherwise stated.
3. Sales of tangible personal property to a business license holder engaged in the business of contracting when the property so sold is incorporated or fabricated by the contractor into any structure, project, development or improvement.
4. Fifty percent (50%) of the gross receipt from the sales of tangible personal property made directly to the United States government, its departments or agencies.
5. Sales of tangible personal property for resale or re-lease, but this exemption shall apply only where such sales are not retail sales or where such sales are not made to an ultimate consumer.
6. Sales of tangible personal property to manufacturers, modifiers or assemblers where such property directly enters into and becomes an ingredient or component part of any manufactured, fabricated or processed article, substance or commodity for sale in the regular course of business.
7. Services provided in connection with retail sales, if invoices to the customer, sales tickets, cash register tapes, and all other business records show separate charges for such services, but this exemption shall apply only where such service is not customarily included in the retail sale itself and where such service is not an essential element in the retail sale itself, and no deduction shall be allowed for fabrication labor of retail items sold.
8. Sales of tangible personal property made directly to the Community, any department, agency, entity or enterprise.



9. Sales of articles used by human beings for food, drink or condiment, or articles of jewelry, craftwork or art, where such articles are sold by persons acting as traveling merchants, food sellers, peddlers or otherwise without an established place of business. This provision does not include professional food trucks.
10. The sale of drugs on the prescription of a member of the medical, dental or veterinary profession who is licensed by law to administer such drugs. This provision does not include any over-the-counter medication even when written as a prescription.
11. Sales of motor fuel or use fuel upon which a tax is paid to the State of Arizona under the provisions of A.R.S. § 28-5701, and as it may be amended in the future.
12. Sales of machinery or equipment used directly in manufacturing, processing fabricating, job printing, refining or metallurgical operations.
13. Sales of machinery or equipment used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and the handling, loading or transportation of such extracted materials to the surface. "Mining" includes underground, surface and open-pit operations for the extraction of ores and minerals.
14. Sales of tangible personal property consisting of machinery, equipment or transmission lines used directly in the production or transmission of electrical power (including transformers and control equipment used at transmission substation sites). This provision does not apply to the distribution of electrical power.
15. Sales of tangible personal property by a church or by a charitable organization recognized as tax exempt under section 501(c)(3) of the federal Internal Revenue Code and any successor provision.
16. Professional services, instruction and other services not connected with the making of retail sales.
17. Sales of livestock, cotton, cottonseed, wheat, barley, and hay.
18. Charges for actual freight costs incurred on the shipment of tangible personal property to the purchaser.
19. Sales of a motor vehicle to an enrolled Community Member residing on the Reservation and used exclusively for non-business related purposes.
20. Sales of mobile and/or manufactured home to an enrolled Community Member for use on the Reservation as a personal residence.

21. Sales of tangible personal property shipped from a warehouse on the Reservation, if all of the following requirements are satisfied:
  - a. the sale in question is made to a purchaser residing at or doing business at a location outside of the Reservation for use or resale by the purchaser outside the Reservation;
  - b. title to the property sold transfers from the seller to the purchaser outside of the Reservation; and
  - c. the only activities of or on behalf of the seller of any kind taking place on the Reservation are receiving for storage, storage, and shipment of tangible personal property from one or more warehouses on the Reservation.
22. Sales of livestock and poultry feed to persons who are engaged in producing livestock, poultry, or livestock or poultry products, or who are engaged in feeding livestock or poultry commercially. For the purposes of this section, "poultry" includes ratites.
23. Sales of empty containers to manufacturers, modifiers or assemblers where such containers become a component part of any manufactured, fabricated or processed article, substance or commodity, or are used to package an article, substance or commodity for shipment.
24. Document fees charged by dealers of motor vehicles and manufactured housing shall not be subject to tax if the fee is reasonable with respect to the services provided and shown separately on the dealer's books and records and the sales invoice.
25. Motor vehicle trade-ins as a reduction to the purchase price or lease of another vehicle.

### **13.303. Leasing, Renting or Licensing of Tangible Personal Property.**

A. There is levied and there shall be collected a privilege tax upon every person engaging or continuing on the Reservation in the business of leasing, renting or licensing for use any tangible personal property, such tax being levied on the leasing, renting or licensing for use in the amount of 6% of the gross proceeds or gross income of the business from such leasing, renting or licensing for use any tangible personal property.

B. Gross income from leasing, renting or licensing for use of tangible personal property includes charges for installation, labor, insurance, maintenance, repairs, pickup, delivery, assembly, set-up, penalty fees, and any other charges are subject to tax.

C. The following are exempt from the levy of this tax:

1. Gross income derived from leasing, renting or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, renting or licensing for use of such property.
2. Rental of machinery or equipment used directly in manufacturing, processing, fabrication, job printing, refining, or metallurgical operations.
3. Rental of machinery or equipment used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and the handling, loading or transportation of such extracted minerals to the surface. "Mining" includes underground, surface and open-pit operation for the extraction of ores and materials.
4. Rental of tangible personal property consisting of machinery, equipment or transmission lines used directly in the production or transmission of electrical power (including transformers and control equipment used at transmission substation sites). This provision does not apply to the distribution of electrical power.
5. Renting or leasing of a motor vehicle to an enrolled member residing on the Reservation and which vehicle is used exclusively for non-business purposes.
6. Operation wages included in the cost of rental of tangible personal property for non-construction equipment, if such wages are separately stated or shown in the company's books, records and the transaction invoice.
7. The leasing, renting or licensing for use of tangible personal property to a contract where the owner of the project is the Community, which includes any department, program, district or enterprise.

#### **13.304. Retail Sale of Alcohol.**

A. There is levied and there shall be collected a privilege tax upon every person engaging or continuing on the Reservation in the business of selling alcoholic beverages at retail, such tax being levied on the sale of alcoholic beverages in an amount equal to 8% of the gross proceeds of sale or gross income of the business from such sales.

B. An Alcohol Tax and Drug and Alcohol Abuse Prevention Fund is established in the Community Budget. The Treasurer shall deposit 50% of the revenues received under this Section 13.304 into this Fund. Monies deposited into this Fund shall be used for education and health care programs, projects related to drug and alcohol abuse prevention and treatment and for other Community social projects.

#### **13.305. Retail Sale of Tobacco Products.**

A. The tax rate shall be an amount equal to 2.5% of the gross proceeds of sale or gross income of the business of selling tobacco products at retail.

B. This section does not apply to E-cigarettes and the liquid “vapor” products, which are taxable under Section 13.302 and not as tobacco products.

### **13.306. Telecommunication Services.**

The tax rate shall be in the amount of 1.5% of the gross proceeds of producing, providing, or furnishing telecommunication services to consumers on the Reservation.

A. *Telecommunication services* means transmitting signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio waves, light waves or other electromagnetic means.

B. Gross proceeds from the business activity of providing telecommunication services to consumers on the Reservation shall include:

1. all fees for connection to a telecommunication system.
2. toll charges, charges for transmissions, and charges for other telecommunications services, provided that such charges relate to transmissions originating on the Reservation and terminating in this state.
3. fees charged for access to or subscription to or membership in a telecommunication system or network.
4. charges for monitoring services relating to a security or burglar alarm system located on the Reservation where such system transmits or receives signals or data over a communications channel.

C. Gross income from sales of telecommunication services to another provider of telecommunication services for resale to the purchaser's customers with such service shall be exempt from the tax imposed by this section; provided, however, that such purchaser is properly licensed to engage in such business.

D. Charges by a provider of telecommunication services for transmissions originating on the Reservation and terminating outside the State of Arizona are exempt from the tax imposed by this section.

E. The tax imposed by this section shall not apply to sales of telecommunication services to permanent residents of the Reservation for residential use.

### **13.307. Advertising.**

The tax rate shall be an amount equal to 6% of the gross proceeds from the business activity of any person engaged in advertising by billboards, direct mail, radio, television, and any other means on the Reservation calculated to appeal to prospective purchasers.

**13.308. Amusements, Exhibitions and Similar Activities.**

A. The tax rate shall be an amount equal 6% of the gross receipts from every person engaging or continuing on the Reservation the business of operating amusements, exhibitions, and similar activities. The tax shall apply to the gross receipts from such activities, including: theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, sports events, jukeboxes, driving ranges, animal rides, dance halls, boxing matches, health clubs, spas or any other business charging admission for exhibition, amusement, or entertainment.

B. Income from private or group instruction is deductible from gross receipts.

C. Income from providing attended equipment (e.g. jumping castles, go karts) to private events is taxable under this classification. Income from providing equipment without an attendant is taxable under Section 13.303.

**13.309. Hotel/Motel Services.**

A. The tax rate shall be an amount equal to 13% on the gross proceeds of sales or gross income derived from the business on the Reservation of operating, for occupancy by transients, a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, lodging house, rooming house, public or private club, mobile home or house trailer at a fixed location or other similar structure, and also including a space lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home, house trailer, or recreational vehicle furnished by them for such occupancy. For purpose of this Section 13.309, "transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for fewer than 30 consecutive days. The tax base does not include gross proceeds of sales or gross income derived from business activity that is properly classified under the retail, restaurant and bar, amusement, telecommunications, rental of tangible personal property or any other classifications.

B. If the business is taxable under the provisions of ARS, Title 42, or any successor provisions, a deduction equal to 50% of the gross proceeds or gross income from such activity may be taken when computing the tax liability under this title, provided that such Arizona tax is validly imposed on such activity as a matter of federal law.

**13.310. Parking.**

The tax rate shall be an amount equal to 6% of the gross receipts from the business of parking motor vehicles, payable by every person engaging or continuing on the Reservation in the business of parking motor vehicles. For purposes of this Section 13.310, "motor vehicles" includes

automobiles, trucks, recreational vehicles, aircraft, motorcycles and watercraft. For this purpose, "parking" shall be for a period of less than seven consecutive days.

**13.311. Garaging or Storage.**

The tax rate shall be an amount equal to 6% of the gross receipts from the business of garaging or storing motor vehicles, payable by every person engaging or continuing on the Reservation in the business of garaging or storing motor vehicles. For purposes of this Section 13.311, "motor vehicles" includes automobiles, trucks, recreational vehicles, aircraft, motorcycles and watercraft. For this purpose, "garaging" or "storing" shall be for a period of seven or more consecutive days.

**13.312. Transient Residential Rentals.**

The tax rate shall be an amount equal to 6% of the gross proceeds from the business activity of any person engaged in the leasing, rental or licensing of transient residential property on the Reservation, other than allotted land or land used for farming or agricultural purposes. "Transient residential property" is property leased, rented or licensed for residential purposes, including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home, house trailer or recreational vehicle, for a period of 30 days or more but less than six consecutive months. For this purpose, property leased on a month-to-month basis to permanent residents of the Reservation is not considered transient residential property. The tax base shall not include the cost of property taxes, insurance, and utility services to the extent such costs are not separately paid for by the renter, nor shall it include gross proceeds derived from business activity taxed under Section 13.309.

A. Transient residential rentals do not qualify for the deduction provided in Section 13.320.B. when computing taxes owed to the Community.

**13.313. Non-Residential/Commercial Rentals.**

A. The tax rate shall be an amount equal to 6% of the gross proceeds from the business activity of any person engaged in leasing, renting or licensing for use non-residential/commercial property on the Reservation, other than allotted land or land use for farming or agricultural purposes. The tax base shall not include the cost of property taxes, insurance and utility services to the extent such costs are not separately paid for by the renter/lessee.

B. Gross proceeds derived from the leasing, rental or licensing of property in the Blackwater Industrial Park, the Lone Butte Industrial Park, and the San Tan Industrial Park are exempt from this tax on nonresidential rentals; provided, however, that this exemption does not include any leasing, rental or licensing of such property by any sublessee or by any person who, directly or indirectly, leases, rents or licenses the property from any sublessee.

**13.314. Construction Contracting.**

A. The tax rate shall be an amount equal to 6% of the gross proceeds from the contracts for construction on the Reservation of any person engaged in business as a construction contractor as defined in Sections 13.101.A.4 and 13.101.A.5, but an amount equal to 35% of such gross proceeds shall not be subject to tax.

B. Gross proceeds derived from the following construction contracts are exempt from the tax on construction contracting:

1. Gross income derived from acting as a subcontractor.
2. Gross income derived from construction contracts for non-transient residential property comprised of single and multifamily residences occupied by permanent residents of the Reservation and other residential property that would not be subject to either of the taxes imposed under Sections 13.309 and 13.312 if the property were leased, rented or licensed to persons other than the owner of the property.

C. In any case, where the community has designated as area for economic development and the gross proceeds from activity in Section 13.314 are subject to Arizona transaction privilege tax under ARS 42-5061 et seq. (or any successor provision), an additional deduction equal to 75% of the gross proceeds (after the deduction of the 35% provided for in Section 13.313.A) may be taken by the taxpayer for any contract between the contractor and a tenant, provided that such Arizona tax is validly imposed on such activity as a matter of federal law. The Community has designated the followings areas as economic development sites:

1. Lone Butte Industrial Parks
2. Memorial Airfield
3. Property under the control of Wild Horse Pass Development Authority or Sun Valley Marina Corporation
4. Toka Sticks Development Area

D. The gross income from a contract to conduct activities associated with remedial work in response to a release or suspected release of a hazardous substance, pollutant or contaminant from a facility, within the Reservation or surrounding areas into the environment will be exempt from Section 13.314.A tax. For purposes of this subsection, "remedial work" will include assessing, monitoring, excavation, transportation, treatment and installation of structures and equipment to contain future hazardous substances.

**13.315. Utilities.**

A. The tax rate shall be an amount equal to 6% of the gross proceeds upon every person engaging in or continuing on the Reservation the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers who reside on the Reservation.

B. Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and deductible from the gross income subject to the tax imposed by this section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.

C. The tax imposed by this section shall not apply to:

1. sales of utility services to permanent residents of the Reservation for residential use;
2. sales of utility services to a hospital or other health care organization, provided that the hospital or other health care organization is either operated by a nonprofit organization exclusively for charitable purposes or operated by a governmental entity; and
3. revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment.

### **13.316. Restaurants and Bars.**

A. The tax rate shall be an amount equal to 6% of the gross receipts from the business activity of preparing or serving food or nonalcoholic beverages for consumption on or off the premises, upon every person engaging or continuing in the business of preparing or serving food or beverages in a bar, cocktail lounge, restaurant, cafeteria, dining room, lunch counter, snack bar, soda fountain, catering service or similar establishment where articles of food or drink are sold for consumption on or off the premises. Cover charges and minimum charges must be included in the gross income of this business activity.

B. The following sales are exempt from the Restaurant and Bars levy:

1. Gross receipts from preparing or serving food or nonalcoholic beverages at schools, hospitals, daycare facilities, jails or correction facilities.
2. Gross income from the business activity of preparing or servicing alcoholic beverages for consumption on or off the premises.
3. Gratuities/tips when the total amount received is:
  - a. separately stated on the check or bill: and



- b. segregated in the seller's records for the account of the employees providing the services.
- 4. If the restaurant cannot specifically segregate the gratuities or if any portion of the gratuities charged are not distributed to the employees involved, the total amount of the gross receipts from gratuities are included in the tax income of the restaurant.

**13.317. Reserved.**

**13.318. Basis for Taxation under Certain Conditions.**

A. In determining value as applied to sales from one person to another person, or other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the Treasurer shall determine the value upon which the tax shall be based, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by others where no common interest exists between the buyer and seller, but otherwise under similar circumstances and conditions.

B. For the purpose of computing the taxes imposed by this chapter, "conditional or time sales," shall be treated as credit sales and the tax shall be based only upon the amounts received under such security agreement, but if the seller transfers his interest in such agreement to a third person, he shall pay an amount based upon the full sale price of the commodity, unless a record is kept of payments thereafter made on the contract in such a manner that the Treasurer may at all times ascertain from the records of the seller the amount paid thereon by the purchaser. If at any time, the Treasurer cannot so ascertain the amount paid thereon, the tax shall be computed to include any amounts not shown to be paid by the records of the seller to the satisfaction of the Treasurer.

**13.319. General Exemptions.**

The following activities are exempted from taxation under this Chapter 3:

A. The purchase by the Gila River Indian Community, any department, agency, entity or enterprise of any goods or services otherwise subject to taxation under Chapter 3.

B. The purchase of any goods or services otherwise subject to taxation under Chapter 3 by any corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involves the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in Section 501(h) of the federal Internal Revenue Code and any successor provision, and which does not participate

in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

### **13.320. Deductions.**

A. Accrual basis taxpayers may claim a deduction against gross receipts for bad debts if and after all of the following conditions apply:

1. The taxpayer reported as taxable the gross receipts from the transaction on which the bad debt deduction is taken and remitted the corresponding tax;
2. The debt arose from a debtor-creditor relationship and was based on a valid obligation to pay a fixed or determinable sum of money;
3. All or part of the debt is worthless. A debt is worthless if the surrounding circumstances indicate that the debt is uncollectible and that legal action to enforce payment of the debt has been, or would be futile;
4. Amounts received on the debt for carrying charges, interest, and repossession expenses are not allowed as a bad debt deduction if those amounts have not been reported as taxable and corresponding tax was not remitted: and
5. If a taxpayer recovers all or part of the bad debt after taking a bad debt deduction, he must report the amount as taxable gross receipts when received.

B. In any case where the gross proceeds from an activity taxable under Chapter 3 of this title are also taxed under the provisions of the ARS, Title 42, or any successor provisions, a deduction equal to 75% of the gross proceeds or gross income from such activities may be taken when computing the tax liability under this title, provided that such Arizona tax is validly imposed on such activities as a matter of federal law. This deduction does not apply to section 13.304, 13.305, 13.306, 13.309, 13.312, 13.313 and 13.314.

## **CHAPTER 4. TOBACCO PRODUCTS TAX**

### **13.401. Tobacco Products.**

A. There is levied and there shall be collected a tobacco products tax upon every person engaging or continuing on the Reservation in the business of selling tobacco products at retail, in the following amounts:

1. On each cigarette, 5 cents.
2. On smoking tobacco, snuff, fine cut chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut chewing tobacco, and refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used

exclusively for agricultural, horticultural or religious purposes and unfit for human consumption, 11.3 cents per ounce or major fraction thereof.

3. On all cavendish, plug or twist tobacco, 2.8 cents per ounce or fractional part thereof.
4. On each twenty small cigars or fractional part thereof weighing not more than three pounds per thousand, 22.3 cents.
5. On cigars of all descriptions except those included in paragraph 4 above, made of tobacco or any substitute thereof, if manufactured to retail at not more than 5 cents each, 11 cents on each three cigars, but if manufactured to retail at more than 5 cents each, 11 cents on each cigars.

B. A Tobacco Tax and Health Care Fund is established in the Community Budget. The Treasurer shall deposit all monies received under Section 13.401 into this Fund. Monies deposited into this Fund shall be used for health promotion, prevention, wellness, and health care programs and projects, including educational programs for the Community showing the harmful effects of smoking. These Community based programs and projects should include components designed to discourage tobacco use among minors in particular as well as among the general Community membership. Monies in the Fund may also be used to support programs and projects that will assist adults and children who suffer from health problems caused by smoking.

Allocation of monies from the Tobacco Tax and Health Care Fund shall be approved by the Community Council under a program adopted by the Community Council.

C. This Title 13 shall continue to incorporate tobacco tax rate increases which are the result of ballot propositions approved by the voters of the State of Arizona, and are effective the date that the Governor of the State of Arizona signs the ballot proposition into state law, unless the Community Council takes specific action limiting, altering or otherwise opting out of the amendment. All such amendments to Title 13 shall be presented to the districts of the Community within 180 days from the effective date.

## **CHAPTER 5. FUEL TAX**

### **13.501. Motor Vehicle Fuel.**

- A. Reserved for future use.

### **13.502. Aviation and Jet Fuel.**

The tax rate shall be an amount equal to 3¢ per gallon upon every person engaging in or continuing on the Reservation the business of selling aviation or jet fuel. The tax shall apply to the sale of all aviation or jet fuel on the Reservation.

## **CHAPTER 6. RESERVED**

## CHAPTER 7. ADMINISTRATION

### 13.701. Administration and Enforcement.

The administration and enforcement of this title is vested in and shall be exercised by the Treasurer. In performing his duties pursuant to this title, the Treasurer may require the attendance of the taxpayer or of any other person having knowledge and for such purposes may take testimony, require material proof, administer oaths, and issue subpoenas and subpoenas duces tecum signed by the Treasurer or his designee, to be served on any person.

### 13.702. Presumption that all Gross Receipts are Taxable.

A. For the purpose of the proper administration of this title and to prevent evasion of the tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established by the person seeking the exemption from taxation.

B. The burden of proving that a sale of tangible personal property was not a sale at retail shall be upon the person who made it, unless such person shall have taken from the purchaser a certificate to the effect that the property was purchased for resale.

### 13.703. Other Presumptions.

A. For purposes of this title the total amount of gross income, gross receipts or gross proceeds of sales shall be deemed to be the amount received, exclusive of the taxes imposed by this title, if the person upon whom the tax is imposed establishes to the satisfaction of the Treasurer that the tax has been added to the sales price and not absorbed by him, but in no event shall the person upon whom the tax is imposed, when an added charge is made to cover the taxes levied by this ordinance, remit less than the amount so collected to the Treasurer.

B. B. A certificate by the Treasurer of the mailing of any notice specified in this title shall be prima facie evidence of the giving of the notice.

C. The burden of proof for all deductions by any taxpayer shall be on the taxpayer, who must prove to the satisfaction of the Treasurer that such deductions shall have been legal and proper under this title. A person taking deductions for "resale" or for "payments to subcontractors" shall not take such deductions unless the persons for whom deductions are taken have obtained any required business licenses or permits.

### 13.704. Monthly Payment and Returns.

The taxes provided for in this title shall be paid monthly unless otherwise expressly provided, or the taxpayer elects to pay them more frequently. The taxpayer shall, on or before the last calendar day of the month following the end of each calendar month, make out a return showing the gross amount, any authorized deductions, taxable amount and amount of the tax due

for the preceding month. The taxpayer shall be required to use the form of return authorized by the Treasurer and on or before the due date shall mail or hand deliver the same, together with remittance for the amount of tax due, payable to the "Gila River Indian Community," to the Treasurer or, if hand delivered, to the Treasurer, the Treasurer's designee, or any employee at the Cashier's Office. The return shall be signed by the taxpayer or his authorized agent, and such signature shall be evidence that the person signing the return verifies the accuracy of the information supplied in the return under penalty of perjury. A remittance mailed in an envelope containing adequate postage and postmarked on or before the due date shall be considered to be timely even if not received until after the due date. If payment is made in any other form than the money which is legal tender of the United States of America, the tax obligation shall not be ended until the check, bank draft or money order has been honored by the person on whom drawn.

### **13.705. Cash Receipts or Accrual Basis.**

The taxpayer may elect to file returns and pay his tax either on a cash receipts or accrual basis, but the taxpayer shall not change from one basis to the other without the prior written approval of the Treasurer. As a condition of granting such approval, the Treasurer may require an audit of the taxpayer's financial statements or other books and records.

### **13.706. Consolidated Returns.**

Any person engaging in two or more forms of business of like classification taxable under this title at the same physical location under a single license may file a consolidated return covering all business activities conducted at that location, of like classification engaged in on the Reservation.

### **13.707. Extension of Time for Making Returns.**

The Treasurer may for good cause extend the date of making any return required by this title, but the date for filing such return shall not extend more than 30 days beyond the regular due date.

### **13.708. Civil Penalties.**

A. If a taxpayer fails to make and mail or hand deliver the monthly privilege tax return by the date due, there shall be imposed a penalty of 5% of the tax due for each month or portion thereof for which the filing of the return remains delinquent, up to a maximum of 15%, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

B. If a taxpayer fails to pay any tax shown or required to be shown on a return, there shall be imposed a penalty of 10% of the tax due, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

C. If a taxpayer fails or refuses to file a return on notice and demand by the Treasurer, the Treasurer may assess a penalty of 25% of the tax, unless it is shown that the failure is due to

reasonable cause and not due to willful neglect. Such penalty shall be due and payable on notice and demand by the Treasurer.

D. If a taxpayer fails or refuses to furnish any information requested in writing by the Treasurer, the Treasurer may assess a penalty of 25% of the amount of any assessed tax deficiency with respect to which the information was requested, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

E. If any part of a deficiency assessed by the Treasurer is due to negligence but without intent to defraud, the Treasurer may assess a penalty of 10% of the amount of the deficiency which is due to negligence.

F. If any part of a deficiency assessed by the Treasurer is due to fraud with intent to evade tax, the Treasurer may assess a penalty of 50% of the amount of the deficiency which is due to fraud.

G. The penalties provided for in this section are due on notice and demand by the Treasurer, are cumulative, and shall accrue interest from the date of assessment.

#### **13.709. Abatement of Penalties.**

A. If a taxpayer has been assessed a penalty pursuant to Section 13.708, the Treasurer, on written application of the taxpayer, shall abate the penalty if he determines that the conduct, or lack of conduct, that caused the penalty to be imposed was due to reasonable cause and not due to willful neglect.

B. If, before an assessment is issued, a taxpayer applies in writing requesting waiver of any penalty that may be assessed pursuant to Section 13.708, the Treasurer shall not assess any penalty with respect to which he determines that the conduct, or lack of conduct, that would cause the imposition of the penalty, was due to reasonable cause and not due to willful neglect.

C. If, before an assessment is issued, a taxpayer voluntarily discloses an outstanding tax return or tax liability owed, the penalties described in this section shall be waived. If it is found that the voluntary disclosure was done in a fraudulent manner, the abatement is thereby voided and the penalties shall be reinstated.

#### **13.710. Interest.**

A. Interest at the rate of 1.5 per month or fraction of a month shall be assessed on any unpaid tax assessed on all late or unfiled transaction privilege tax returns and on all tax shown on a timely filed return that is not paid at the time of filing. Interest shall be compounded monthly and shall continue to accrue on all outstanding amounts until paid.

B. Interest at the rate charged by the Internal Revenue Service adjusted quarterly shall be applied to all tax deficiencies determined on audits.

C. Interest at the rate charged by the Internal Revenue Service plus up to 3%, adjusted quarterly shall be applied to all payment installment agreements as determined by the Treasurer.

**13.711. Examination of Books and Records.**

The Treasurer or his authorized agents may make examination of any books, papers, records or other data bearing upon the correctness of any return, claim for refund, or protest, or for the purpose of making a return where none has been made.

**13.712. Records of Taxpayer.**

It is the duty of every person engaging or continuing in business activities on the Reservation for which a tax is imposed by this title to keep and preserve for a minimum of four years suitable records of the gross income, gross receipts of sales, and invoices for merchandise purchased and sold, resale certificates, job labor records, and all other such books of accounts relating to the taxes for which such person is liable under the provisions of this title. In addition, once an examination involving any person has commenced pursuant to this title, such person must continue to keep and preserve the foregoing records until the conclusion of the examination, even if the four-year period described in the preceding sentence has expired.

**13.713. Inadequate Records.**

In the event the records of the gross income, or of the gross receipts of sales of the business, kept by the taxpayer are deemed by the Treasurer to be unsuitable, or the taxpayer does not keep such other books or records as may be necessary to determine the amount of the tax for which he is liable under the provisions of this title, the Treasurer may prescribe the form and manner of keeping such books and records.

**13.714. Correction of Errors, Etc.**

If the taxpayer makes an error in computing the tax assessable against him on his monthly return, the Treasurer shall correct the error and notify the taxpayer promptly by ordinary mail that the correction has been made. Any additional tax for which the taxpayer becomes liable, plus penalty and interest, shall be payable within 10 calendar days after the letter or form showing the correction is mailed to the taxpayer. If the taxpayer believes he has made any overpayment of tax, the taxpayer may file a claim for refund in accordance with Section 13.715.

**13.715. Claims for Refunds.**

A claim for refund shall be filed in writing with the Treasurer within four years after filing of the return or two years after payment of the tax, whichever period expires later, and shall identify the taxpayer by name, address, and tax identification number. Each claim shall set forth the amount of refund requested, the specific tax period involved, and the specific grounds upon which the claim is founded. In the case of any refund claim allowed by the Treasurer, such refund may be allowed in the form of a credit against tax due on future returns or cash, as the Treasurer determines in his discretion.

### **13.716. Erroneous Refunds.**

The Treasurer may bring an action in Community Court to recover any refund made in error, plus interest computed at the rate and in the manner applicable to federal tax deficiencies under section 6621 of the federal Internal Revenue Code and any successor provision. The action must begin within three years after the refund was made.

### **13.717. Limitations Period for Liability for Tax Deficiencies.**

A. Except as otherwise provided in Section 13.717.C, for taxpayers who have filed a return for a tax period, the amount of any tax imposed by this title for such period shall be assessed within four years from the due date or the receipt date, whichever is later. For purposes of this section, a return filed before the last day prescribed for filing a return shall be considered as filed on said last day.

B. Whenever the Treasurer and taxpayer have consented in writing to assessment of a tax after a particular date or time period, the tax may be assessed at any time prior to the expiration of the time period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

C. In cases where the taxpayer has under-reported gross receipts, taxable receipts after applicable deductions or tax due by 25% or more, the statute of limitations is extended to six years from the date of filing the tax return.

D. For taxpayers who have not filed a return for a tax period or in cases of a false or fraudulent return with intent to evade tax or other willful attempt in any manner to defeat or evade tax, the amount of any tax imposed by this title for such period may be assessed at any time.

### **13.718. Deficiency Assessment Procedure.**

A. If any person who is required to file a return under the provisions of this title fails or refuses to make a return, or fails to pay the full amount of tax due, or if the Treasurer is not satisfied with the return or payment of tax and additional taxes are determined by the Treasurer to be due, the Treasurer shall deliver written notice of his determination of a tax deficiency to the taxpayer, and such deficiency, plus any applicable penalties and interest, shall become final 30 days after such notice has been mailed and served.

B. If the Treasurer is not satisfied with a return or payment of tax, he may examine the return or examine the records of the taxpayer, and recalculated the amount of tax, penalties, and interest required to be paid, for any periods available to the Treasurer under Section 13.712, based upon any information within his possession or which comes into his possession.

C. If any person fails to make a return, the Treasurer may make an estimate of the amount of tax due and compute any applicable penalties and interest due based upon any information within his possession or which comes into his possession. Any estimate made by the



Treasurer is to be made on a reasonable basis. The existence of another reasonable basis of estimate does not invalidate the Treasurer's estimate. It is the responsibility of the taxpayer to prove that the Treasurer's estimate is not reasonable and correct, by providing sufficient documentation of the type and form required by this title or satisfactory to the Treasurer.

### **13.719. Examinations.**

When determining a deficiency or evaluating a claim for refund, the Treasurer may make examination of the books, records, and papers of the taxpayer or any other person who he may believe to be in possession of facts or information pertinent to the subject of inquiry, and may administer oaths as he deems necessary or appropriate in the course of such examination. If no other information is readily available, the Treasurer may make a reasonable estimate of the amount of tax due on the basis of past reports by the taxpayer or by any predecessor, or by any other means deemed reasonable and appropriate by the Treasurer.

### **13.720. Limits on Examinations, Etc.**

A. Upon the Treasurer's completion of an examination relating to a particular tax classification and the determination of a deficiency for such classification has been made pursuant to Section 13.719, the taxpayer's liability for the particular tax for the period subjected to the examination is fixed and determined, and no additional examination may be conducted relating to the particular tax classification except under the following circumstances:

1. The taxpayer files a claim for refund under Section 13.715.
2. The taxpayer failed to disclose material information during the examination, made a material misrepresentation of fact, falsified books or records or otherwise engaged in an action that prevented the Treasurer from conducting an accurate examination.

B. Once the Treasurer issues a notice of proposed assessment of taxes, the Treasurer may not increase the amount of the proposed assessment except in situations in which an additional examination occurs as permitted in Section 13.718.A. or in one or more of the following circumstances:

1. The taxpayer made a material misrepresentation of fact.
2. The taxpayer failed to disclose a material fact to the auditor.
3. The taxpayer failed to provide information as requested by the Treasurer.
4. If, after issuing the notice of proposed assessment but before the assessment becomes final, a decision is rendered in an administrative appeal or judicial proceeding which causes the tax initially proposed to increase.

### **13.721. Payment Under Protest.**

A. If any person feels aggrieved by a tax assessment or believes that any or all of his activities are not subject to a tax imposed by this title, he shall pay the amount of such assessment claimed due before the delinquent date associated with such assessment, as applicable, and shall at that time give notice, in writing, to the Treasurer that all or part of such payment is made under protest, and shall in the notice give the grounds and reasons for such protest and that a certain part thereof, or that the total sum, is protested. Within 10 days of filing the protest notice the taxpayer may appeal the assessment and request an administrative hearing before the Treasurer pursuant to Section 13.722.A.

B. If action has been taken by the taxpayer under protest all subsequent payments due shall be paid on or before the due date. If each tax form is plainly marked "Paid Under Protest," such subsequent payments shall be treated as part of the original protest until such time as remedies have been exhausted or the action withdrawn by the taxpayer.

### **13.722. Administrative Hearing; Court Action.**

A. Administrative Hearing. When a taxpayer files a protest notice, appeals the assessment and requests a hearing before the Treasurer under Section 13.721, such hearing shall normally be held in some suitable room in the principal office of the Community or other suitable place. The Treasurer or his designee shall conduct the hearing which shall be closed to all except the Treasurer or his designee and his authorized representatives, and the taxpayer and his authorized representatives, unless the taxpayer agrees, in writing, to waive restrictions or release of information. The Treasurer or his designee shall provide the taxpayer with not less than 10 days notice of the date, time, and place of the hearing. During the hearing the taxpayer or his authorized representative may present any evidence he deems appropriate to the issues or questions under consideration. In addition, either before or after the hearing, the taxpayer may file a written submission in support of the protest. Within 15 days after the conclusion of the hearing, the Treasurer or his designee shall affirm, modify or vacate any assessment or any decision made with respect to the issues or questions discussed in the course of the hearing. Notice of said decision shall be provided to the taxpayer by the Treasurer or his designee, and said decision shall be effective 10 days after service of notice.

B. Court Action. If, following a hearing pursuant to Section 13.722.A., the taxpayer is then dissatisfied, he may file an action in the Community Court to recover payments made under protest, following appropriate procedures set forth in the Community Code. The filing of a court action shall be made within 60 days after the service of notice of the Treasurer's decision. Failure to file a court action within the required 60 day period shall make the filing null and void and any further protests shall be barred. The court shall conduct de novo review of the Treasurer's decision.

### **13.723. Tax Liability of Partners.**

All taxes assessed upon the business activities or property of a partnership shall be a liability and charged against each and all of the individual partners.

### **13.724. Tax is a Lien; Procedure.**

A. The taxes imposed by this title, if not reported and paid by the due date specified by this chapter, shall constitute a lien on the property of any person liable for the tax.

B. The Treasurer shall give written notice to the taxpayer at his last known mailing address or at the address at which the business is conducted by certified or registered mail. The written notice shall indicate that the Community will enforce a lien on the taxpayer's property unless the taxpayer reports and pays all tax, penalties, and interest past due, or provides satisfactory evidence to the Treasurer that no such amounts are due, within a period of 30 days from service or receipt of said written notice.

C. If the taxpayer does not pay amounts due or provide evidence that such amounts are not due within 30 days after service or receipt of said written notice, or if the Treasurer considers it necessary to take immediate action in order to protect the value of the lien, the Treasurer shall file a "Notice and Claim of Lien" to perfect a lien. Such Notice and Claim of Lien shall be filed with the Community Court or such other office designated by the Community Council to perfect a lien against property located on the Reservation and in such other appropriate filing office to perfect a lien against property located outside the Reservation. The Treasurer shall promptly send by certified or registered mail a copy of such Notice and Claim of Lien to the taxpayer at his last known mailing address or at the address at which the business is conducted. The "Notice and Claim of Lien" shall contain the following:

1. A description of the property subject to the lien which is sufficient for identification.
2. The name of the taxpayer as owner or reputed owner of the property.
3. The amount of the delinquent tax, including penalties and interest, or if this amount cannot be determined precisely because suitable records and books were not made available by the taxpayer, the amount assessed, including penalties and interest, by the Treasurer as authorized by this title when such books and records are not available or are unsuitable.

D. The Community shall have the right to bring an action to enforce the lien in the Community Court or in any other court having jurisdiction over the property, but failure to enforce the lien by such action shall not affect its validity.

### **13.725. Collection of Delinquent Taxes.**

A. If any tax imposed by this title, or any portion thereof, is not paid within 30 days after the same becomes delinquent, the Treasurer shall be empowered to commence action in the Community Court or any other court of competent jurisdiction to collect tax, penalties and interest due, and to utilize any and all appropriate remedies.

B. Every tax imposed by this title, and all increases, interest and penalties thereon, shall become, from the time the same is due and payable, a personal debt from the person liable to the Community and it shall be payable to and recoverable by the Treasurer.

C. If a person liable to pay any tax neglects or refuses to pay the tax, the Treasurer may collect such tax, and such other sums as are sufficient to cover the expenses of the levy, by levy upon all property and rights to property belonging to the person, or subject to a lien as provided in this title, for the payment of the tax.

### **13.726. Levy.**

A. If a person neglects or refuses to pay any sum for which they are liable pursuant to this title, the Treasurer may collect the liability, and such other sums as are sufficient to cover the expenses of the levy, by levy upon all property and rights to property, except property exempt under Section 13.727, belonging to the person or subject to a lien for the payment of the liability.

B. The levy shall not be made more than six years after the amount of the liability becomes final. The taxpayer and the Treasurer may extend the six year limitation prescribed by this subsection for any length of time by executing a written agreement before the expiration of the six year limitation. If enforced collection has been stayed by operation of law, the period of limitations shall be extended by the period of time of the stay.

C. As used in this chapter, "levy" includes the power of distraint and seizure by any means. Except as otherwise provided in Section 13.726 E, a levy extends only to property possessed and obligations existing at the time of the levy or within 21 days after the date of the levy. In any case in which the Treasurer may levy upon property or rights to property, he may seize and sell the property or rights to the property, whether real or personal, tangible or intangible.

D. If any property or right to property upon which a levy has been made under Section 13.726 A is not sufficient to satisfy the claim for which the levy is made, the Treasurer may as often as may be necessary proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due, together with all expenses, is fully paid.

E. The effect of a levy on salary or wages payable to or received by a taxpayer is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable.

F. With respect to a levy described in Section 13.726 E, the Treasurer shall promptly release the levy when the liability out of which the levy arose is satisfied or becomes unenforceable and shall promptly notify the person upon whom the levy was made that the levy has been released.

G. If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records containing evidence or statements relating to the property or right to property subject to levy shall, upon demand of the Treasurer, exhibit such books or records to the Treasurer.

### **13.727. Property Exempt from Levy.**

- A. The following property is exempt from levy:
1. The personal residence of the taxpayer.
  2. Wearing apparel and school books as are necessary for the taxpayer or members of his family.
  3. So much of the fuel, provisions, furniture, personal effects, firearms for personal use, livestock and poultry as does not exceed the aggregate value provided for in section 6334 of the federal Internal Revenue Code and any successor provision.
  4. So many of the books and tools necessary for the trade, business or profession of the taxpayer as do not exceed in the aggregate the value provided for in section 6334 of the federal Internal Revenue Code and any successor provision.
  5. Mail, addressed to any person, which has not been delivered to the addressee.
  6. If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages or other income as is necessary to comply with such judgment.
  7. Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under Section 13.727.D.

B. The official seizing property of the type described in Section 13.727.A. shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the official making the seizure, the Treasurer shall summon three disinterested individuals who shall make the valuation.

C. No property or rights to property shall be exempt from the levy provided in this article other than the property specifically made exempt by Section 13.727.A.

D. The following wages, salary and other income payable to or received by an individual are exempt from levy under Section 13.727.A.6.:

1. In the case of an individual who is paid or receives all wages, salary and other income on a weekly basis, the amount of such compensation received during any week which is exempt from levy is the amount determined pursuant to section 6634(d) of the federal Internal Revenue Code and any successor provision and which is verified in such manner as set forth in section 6334 or such successor provision.
2. In the case of any individual not described in Section 13.727.D.1., the amount of the wages, salary and other income payable to or received during any applicable

pay period or other fiscal period, as determined under rules prescribed by the Treasurer, which is exempt from levy under Section 13.727.A is an amount, determined under such rules, which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as the individual would have under Section 13.727.D.1. if, during such period of time, the individual were paid or received such wages, salary and other income on a regular weekly basis.

### **13.728. Surrender of Property Subject to Levy.**

A. Any person in possession of, or obligated with respect to, property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Treasurer, surrender such property or rights to property or discharge such obligation to the Treasurer, except such part of the property or rights to property as is, at the time of such demand, subject to an attachment or execution under any judicial process.

B. A person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Treasurer, is liable in a sum equal to the value of the property or rights to property not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, with costs and interest computed at the rate and in the manner provided under Section 13.710 from the date of such levy, or, in the case of a levy described in Section 13.726.E, from the date such person would otherwise have been obligated to pay such amounts to the taxpayer. Any amount, other than costs, recovered under this subsection shall be credited against the tax liability for the collection of which the levy was made.

C. A person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made who, upon demand by the Treasurer, surrenders the property or rights to property, or discharges the obligation, to the Treasurer or who pays a liability under Section 13.728.B is discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from the surrender or payment.

D. As used in this section, "person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

### **13.729. Notice and Sale of Seized Property.**

The notice of sale and sale of property seized by the Treasurer under this article shall be conducted in the manner and the time and with the legal effect provided for in section 6335 of the federal Internal Revenue Code and any successor provision relating to the sale of seized property by federal tax levy.

### **13.730. Injunctions.**

No injunction shall be awarded by any court or judge to restrain the collection of the taxes imposed by this title or to restrain the enforcement of this title.

### **13.731. Unlawful Acts.**

A. It is unlawful for any person or for any officer or agent of any company or corporation to fail or refuse to make the returns and to pay the tax provided to be made by the provisions of this title, or to make or permit to be made any false or fraudulent return or false statement in any return required by this title or for any reason to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this title or for any person or officer or agent of a company to fail or refuse to permit the examination of any book, paper, account, record, or other data by the Treasurer as required by this title or to violate any of the other provisions of this title and any such person, officer or agent of a company, corporation or association is guilty of an offense and shall be fined in an amount not to exceed \$500 or be imprisoned for a period not exceeding 90 days, or both, for each offense; and the Community may institute such civil action and impose such civil penalties as is necessary to enforce the provisions of this title.

B. In addition to the foregoing penalties, any violation of this title shall be grounds for the revocation or cancellation of any business license, permit, lease or contract issued to the violator by the Community; and shall also be grounds for excluding the person, company or corporation from the Reservation.

### **13.732. Successor Liability.**

Transferees of property of a taxpayer, including but not limited to donees, heirs, legatees, devisees, and distributees, shall be liable for the taxpayer's tax liabilities hereunder in situations in which assets are transferred to the transferee for less than fair market value, such as in a liquidation, gratuitous transfer, bargain sale to a related party, or fraudulent conveyance, or in which the transferee succeeds to the taxpayer's liabilities as a matter of law, such as in a merger. Such liabilities may be either as to the amount of tax shown on a return or as to any deficiency or underpayment of any tax. Such liabilities shall be assessed, paid, and collected in the same manner and subject to the same provisions as in the case of the taxes with respect to which the liabilities were incurred. The period of limitations for assessment of the liabilities of a transferee shall be within one year after the expiration of the period of limitations for assessment against the transferor. The burden of proof is on the Treasurer to show that a person is a transferee liable for the taxpayer's tax liabilities and is on the transferee to show that the taxpayer has no tax liabilities.

### **13.733. Compromises.**

The Treasurer shall have appropriate authority to settle disputes in examinations, administrative appeals, and court cases. A settlement agreement must be in writing and based on a thorough assessment of the merits of the dispute, as well as on the taxpayer's ability to pay and other collection risks, if applicable. Subordinates of the Treasurer may enter into a settlement agreement only with the approval of the Treasurer, and after presenting a written report of the basis and reasons for the proposed settlement. A settlement agreement may address the effect of the settlement on future tax periods if the Treasurer deems it appropriate in the interests of tax

administration. The Treasurer shall provide a quarterly report regarding settled cases to the Community Council.

**13.734. Installment Agreements.**

The Treasurer shall have discretion to enter into installment agreements with taxpayers in cases in which the Treasurer believes such an agreement will promote the Community's interests in tax collection. In order to qualify for such an agreement, a taxpayer must make full disclosure of his financial condition, such disclosure must show that the taxpayer cannot pay the entire deficiency or assessment in a lump sum but can pay such amount over time under the terms of the agreement, provide for interest computed following Section 13.710.C., and give the Treasurer the ability to terminate the agreement in the event of default or in other circumstances appropriate to the interest of tax administration. The Treasurer shall provide a quarterly report regarding installment agreements to the Community Council.

**13.735. Severance Clause.**

The provisions of this title are declared to be severable and if any section, sentence, clause or phrase of this title shall for any reason be held to be invalid or unlawful, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this title, but they shall remain in effect, it being the Community Council's intent that this title shall stand notwithstanding the invalidity of any part.

**13.736. No Waiver of any Tax.**

Except for compromises otherwise permitted under this title, no waiver of any tax or interest provided for and described in this Title shall be granted to any person.

**13.737. Rules and Regulations.**

The Treasurer is authorized to formulate rules and regulations and procedures necessary to the efficient enforcement of this title, and when approved by the Community Council such rules, regulations, and procedures shall be binding upon and obeyed by all persons subject to this title. A copy of all rules and regulations shall be furnished to any person subject to this title upon request.

**13.738. Effective Date.**

This ordinance, and any amendments to this ordinance, shall become effective the 1<sup>st</sup> of the month immediately following approval by the Secretary of the Interior.



## BUSINESS LICENSES AND TAXATION

### TITLE 13 LEGISLATIVE HISTORY

Ordinances and resolutions appearing in boldface are, in whole or part, currently effective.

1983 Compilation

Ordinance GR-01-89 amended Sections 13.301 and 13.302 (adopted February 1, 1989)

Ordinance GR-03-89 amended Sections 13.301, 13.302 and 13.303 (adopted October 4, 1989)

Resolution GR-117-89 amended Chapter 3 (adopted October 4, 1989)

Ordinance GR-06-94 amended Sections 13.301 and 13.302 (effective November 28, 1994)

Ordinance GR-08-94 amended Section 13.302 (adopted December 21, 1994)

Ordinance GR-08-96 amended Section 13.302 (adopted November 6, 1996)

Resolution GR-73-00 added Section 13.303(B)(7) (adopted April 19, 2000)

Ordinance GR-06-02 enacted Title 13, Business Licenses and Taxation Ordinance (effective October 1, 2002)

Ordinance GR-08-02 added Section 13.316(C) (adopted October 2, 2002)

Ordinance GR-09-02 amended Sections 13.303(A) and 13.303(B) (adopted December 4, 2002)

Ordinance GR-06-05 enacted current Title 13, Business Licenses and Taxation (effective August 14, 2005)

**Resolution GR-38-05 approved the regulations for the effective enforcement of Title 13 (adopted March 2, 2005)**

Ordinance GR-05-06 amended Section 13.303(A) and added Section 13.303(C) (adopted November 27, 2006)

Ordinance GR-13-09 amended Section 13.307 in GR-06-05 (adopted October 7, 2009)

Ordinance GR-15-09 enacted the 2009 GRIC Code (adopted October 7, 2009)

Ordinance GR-09-13 amends Sections 13.301, 13.303, and 13.501 (adopted September 4, 2013)

**Ordinance GR-10-13 rescinds Title 13 and enacts revised Title 13 (adopted November 20, 2013)**

**Ordinance GR-05-15 amended Section 13.301.B. by adding paragraph 21 (adopted August 15, 2015)**

**Ordinance GR-02-16 amended Section 13.208 (adopted March 2, 2016)**

**Ordinance GR-05-16 amended Section 13.307 (adopted May 4, 2016)**