

ARTICLE V. - TAXATION CODE

Sec. 7-221. - Title.

This Article shall be known as the "Mohegan Tribal Tax Code."

(Ord. No. 2002-11, § 1, 12-4-2002)

Sec. 7-222. - Effective Date.

- (a) This Code shall be effective on the date that the Tribal Council approves the Tribal Resolution adopting this Article into law. This Code shall supersede two (2) interim tax laws enacted by The Mohegan Tribe: Resolution No. 2000-16 which was adopted by the Tribal Council on August 2, 2000, as an interim Tax Code governing the taxation of food and beverage sales on the Reservation; and Resolution No. 2002-08 which was adopted by the Tribal Council on April 10, 2002, governing taxation of hotel occupancy on the Reservation.
- (b) This Code shall apply to The Mohegan Tribal Gaming Authority ("MTGA") upon approval of an MTGA Resolution adopting this Article as the taxation law applicable to MTGA.

(Ord. No. 2002-11, § 2, 12-4-2002)

Sec. 7-223. - Authority.

This Article is adopted by the Tribal Council of The Mohegan Tribe pursuant to Article IX, Section 2(s) of the Constitution of The Mohegan Tribe of Indians of Connecticut granting authority to The Tribe to "levy and collect taxes and raise revenue to meet with needs of The Tribe or to support Tribal government operations."

(Ord. No. 2002-11, § 3, 12-4-2002)

Sec. 7-224. - Purposes.

- (a) The Mohegan Tribe of Indians of Connecticut is an American Indian tribe recognized by the United States pursuant to 25 CFR 83, and 25 USC 1775 and possessing all of the inherent sovereign powers and authority of a federally recognized Indian tribe including the authority to enact laws and regulations to protect the political integrity, economic security, and health and welfare of The Tribe and its members.
- (b) A number of business enterprises are located within The Mohegan Indian Reservation including a Tribally owned and operated casino, retail stores, restaurants, lounges, a gas station, a sports arena, a convention center and lodging facilities. Due to the existence of such businesses, a large number of persons enter onto the Reservation to engage in business activity and other activities associated with the above-referenced enterprises.
- (c) The above-identified business enterprises and associated activity require basic governmental infrastructure support, including the provision of governmental services such as fire and police protection, and emergency medical assistance.
- (d) In order to provide such services to all businesses within The Mohegan Reservation, The Mohegan Tribe is entitled to assess a reasonable tax upon the activities of all persons who engage in business on the Reservation.
- (e) In order to fulfill certain covenants made by The Tribe, the taxes herein will be of the same types which are imposed by and at rates which are not in excess of those imposed by State and local governments of the New England states or New York upon similar enterprises, property or transactions located in those jurisdictions.

(Ord. No. 2002-11, § 4, 12-4-2002)

Sec. 7-225. - Definitions.

Except as otherwise provided, the following terms are defined as follows:

*"Admission charge"* means the amount paid in the form of a ticket price or other similar entry fee for the right or privilege to have access to a place or location where entertainment, amusement or recreation is provided, exclusive of any charges for instruction.

*Cash Sale* means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. Cash sales shall not include any complimentary transaction of goods and services through use of coupons, Player's Club point charges or similar credit systems.

*Goods Produced Within the Reservation* means all goods and services, excluding meals, sold within the boundaries of the Reservation where the principal value of the goods and services is generated on the Reservation. Services include, without limitation, manicure, pedicure and other nail services, and spa services, including body waxing and wraps, peels, scrubs and facials.

*Hotel* means any building regularly used and kept open as such for the feeding and lodging of guests where any person who conducts himself properly and who is able and ready to pay for such services received from the renting of rooms and the sale of food.

*Meals* means any food products, including non-alcoholic beverages that are furnished, prepared or served in such a form and in such proportions that they are ready for immediate consumption. This also includes food products that are sold on a "take out" or "to go" basis.

*Occupancy* means the possession, or the right to the use or possession, of any room or rooms in a hotel or lodging house or the right to the use and possession of such rooms.

*Person* means and includes any individual, firm, association, corporation, unincorporated entity, or any other group or combination acting as a unit and shall include The Mohegan Tribe, The Mohegan Tribal Gaming Authority and any its agencies or subsidiary units.

*"Place of entertainment"* means any arena, cabaret or other similar venue where sporting events, concerts, or other productions for entertainment, amusement or recreation are held.

*Reservation* means The Mohegan Indian Reservation and includes all land located within the exterior boundaries of the Reservation.

*Retailer* means any business entity that is engaged in selling goods directly to consumers.

*Room* means any room of any kind in any part or portion of a hotel or lodging house let out for use or possession for lodging purposes.

*Tribe* means The Mohegan Tribe of Indians of Connecticut.

(Ord. No. 2002-11, § 5, 12-4-2002; Res. No. 2009-14, 11-26-2008; Res. No. TGA 2009-04, 12-17-2008; Res. No. 2011-35, 6-8-2011)

Sec. 7-226. - Taxes.

(a) *Meals Tax.*

- (1) A tax is hereby imposed on all cash sales of meals sold in any location on the reservation at the rate of seven and 35/100 percent (7.35%) upon the total sales price of the meals.
- (2) The retailer shall be responsible for collecting the tax from the consumer.

(b) *Hotel Occupancy Tax.*

- (1) A tax is hereby imposed on the cash sale of the occupancy of rooms on the Reservation at the rate of fifteen percent (15%) upon the total sales price of the room.
- (2) The retailer shall be responsible for collecting the tax from the consumer.

(c) *Sales Tax.*

- (1) A tax is hereby imposed on the cash sale of all goods produced within the Reservation at the rate of six and 35/100 percent (6.35%) upon the total sales price of such goods.
- (2) The retailer shall be responsible for collecting the tax from the consumer.

(d) *Admissions Tax.*

- (1) A tax is hereby imposed on the cash sale of the admission charge to any place of entertainment on the Reservation at the rate of three dollars (\$3.00) for each admission charge, except that no tax shall be imposed with respect to any admission charge (i) when the admission charge is less than thirty dollars (\$30.00) or (ii) for events at the Mohegan Sun Convention Center.
- (2) The retailer shall be responsible for collecting the tax from the consumer.

(Ord. No. 2002-11, § 6, 12-4-2002; Res. No. 2009-14, 11-26-2008; Res. No. TGA 2009-04, 12-17-2008; Res. No. 2011-35, 6-8-2011)

Sec. 7-227. - Exemptions.

At its discretion, the Tax Office may grant exemptions for any taxes under this Article upon application and approval of such exemption by the Tax Office. The decision of the Tax Office regarding exemptions shall be final and not subject to the Challenges and Appeals Section of this Code

(Ord. No. 2002-11, § 7, 12-4-2002)

Sec. 7-228. - Tax Office.

(a) In order to administer and enforce this Code, The Mohegan Tribe hereby establishes a Tribal Tax Office that shall be vested with the following powers:

- (1) To adopt such rules and regulations as it deems necessary and proper to implement The Mohegan Tribal Tax Code.
- (2) To recommend to the Tribal Council taxes to be levied by The Tribe.
- (3) To oversee the general assessment, levy and collection of taxes in accordance with the Tax Code and all rules and regulations promulgated pursuant thereto.
- (4) To hear and determine in the first instance all challenges to the validity of the Tax Code and its implementing rules and regulations.
- (5) To hear and determine in the first instance all disputes by persons concerning the assessment, levy or collection of taxes, penalties or interest imposed pursuant to the Tax Code and its implementing rules and regulations.
- (6) To hold hearings and summon and subpoena witnesses to appear and testify upon any subject material to the determination of issues arising under the Tax Code, and to produce relevant books, records and documents relative thereto. The hearing may be held at any place the Tax Office designates, after not less than ten (10) days notice of the time and place of the hearing given in writing to the adverse party. The adverse party shall be entitled, on request made to the Tax Office, to the issuance of the Tax Office's subpoena requiring witnesses to obey the subpoena of the Tax Office. The Tax Office's subpoena subjects the witness to the same penalties prescribed by law for failure to obey a subpoena of the appropriate Tribal Court, either Gaming Disputes Court or Mohegan Tribal Court.

(b) The Head of the Tribal Tax Office shall be hired by The Mohegan Tribe as a Tribal employee and shall be subject to all policies, rules and regulations that apply to other Tribal departments.

(Ord. No. 2002-11, § 8, 12-4-2002)

Sec. 7-229. - Assessment and Collection of Taxes.

- (a) The taxes imposed under Section 7-226 (a), (b), and (c) of this Code (meals, hotel occupancy, goods produced within The Mohegan Reservation) are taxes assessed upon the consumer of the goods (i.e., the purchaser of the meals, hotel rooms, or goods produced within The Mohegan Reservation).
- (b) The Tribal tax shall be assessed and collected from the consumer by the retailer of the goods (i.e., the restaurant, the hotel operator and the retailer) on forms that will be provided by the Tribal Tax Office indicating the rate of the tax and other pertinent information.
- (c) The retailer shall remit the taxes that are collected from the consumer to the Tribal Tax Office on forms provided for that purpose by the Office.
- (d) The retailer is responsible for remitting the taxes whether or not the taxes are collected from the consumer.
- (f) If the Tax Office determines that a tax or penalty has been paid in an amount less than that properly due, the Tax Office may assess against the retailer such additional amount found to be due and shall add thereto interest at the rate of twelve percent (12%) per annum from the date the tax was due until date of payment. The Tax Office shall notify the retailer by mail of the additional amount and the same shall become due and shall be paid within ten (10) days from the date of the notice or within such further time as the Tax Office may provide.
- (g) If payment of any tax due is not received by the Tax Office by the last day of the month in which the tax becomes due, there shall be assessed a penalty of five percent (5%) of the amount of the tax; if the tax is not received by the last day of the month next succeeding the month in which the date falls, there shall be assessed a total penalty of ten percent (10%) of the amount of the tax; and if the tax is not received by the last day of the second month next succeeding the month in which the due date falls, there shall be assessed a total penalty of twenty percent (20%) of the amount of tax.
- (h) The Tax Office may grant an extension of time for the filing of tax forms upon the showing of good cause.
- (i) If the Tax Office finds that the payment of a tax less than that properly due or the failure to pay any tax by the due date was the result of circumstances beyond the control of the retailer, the Tax Office may waive or cancel any interest or penalties imposed under this Section with respect to such tax. Inability to pay shall not be considered a circumstance beyond the control of the retailer.

(Ord. No. 2002-11, § 9, 12-4-2002)

Sec. 7-230. - Challenges and Appeals.

- (a) By adoption of this Code, The Tribe and The Mohegan Tribal Gaming Authority hereby consent to be sued in The Mohegan Tribal Court or The Mohegan Gaming Disputes Court, as appropriate, in civil actions for equitable relief and for such monetary relief as is expressly provided for pursuant to this Tax Code. This consent to suit is strictly limited as provided in this Section. No other private right of action by any person shall be deemed created by the Tax Code. The Mohegan Tribal Court and The Mohegan Gaming Disputes Court shall be the exclusive judicial forums vested with subject matter jurisdiction to adjudicate suits brought pursuant to this Tax Code.
- (b) Any person desiring to challenge the legal validity of any provision of the Tax Code, or the assessment, levy or collection of taxes, interest or penalties imposed pursuant to the Tax Code must first petition the Tax Office which shall hear and decide the matter in the first instance.
- (c) If the petitioner is not satisfied with the determination of the Tax Office, the petitioner may appeal the decision to The Mohegan Tribal Court or The Mohegan Gaming Disputes Court, as appropriate, within thirty (30) days of an adverse determination by the Tax Office. The ruling of The Mohegan Tribal Court or The Mohegan Gaming Disputes Court, as the case may be, on the appeal shall be final and may not be appealed in any other forum.

- (d) Decisions of the Tax Office appealed to The Mohegan Tribal Court or The Mohegan Gaming Disputes Court under this Code shall be reviewed using the following standard of review:

The Court shall not substitute its judgment for that of the Tax Office as to the weight of the evidence on questions of fact. The Court shall affirm the decision of the agency unless the Court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the Tax Office; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the Court finds such prejudice, it shall sustain the appeal and, if appropriate, may remand the case for further proceedings or, if the Tax Office's action is required by law, the Court, on sustaining the appeal, may render a judgment that modifies the Tax Office's decision, orders the Tax Office action, or orders the Tax Office to take such action as may be necessary to effect the particular action. For purposes of this Section, a remand is a final judgment.

- (e) A person making any protest to a tax assessment must first pay the full amount of the tax under protest, and shall in the notice give grounds and reasons for such protest and shall state that a certain part thereof, or that the total sum is protested. Within ten (10) days of filing the protest notice, the person shall request a hearing as soon as practicable.
- (f) Upon the receipt of any payment made under protest, the Tax Office shall deposit such receipts in a separate escrow account clearly denominated as such. Funds from this account shall not be expended by The Tribe until a final determination is made that the protest is unwarranted.
- (g) Should the aggrieved person who has paid taxes, penalties, or interest under protest be unsuccessful in challenging all or part thereof, the Tax Office shall transfer the sum determined to be properly paid from the escrow account to the Tribal Treasury.
- (h) The Tax Office may waive the requirement of payment under protest for good cause.

(Ord. No. 2002-11, § 10, 12-4-2002)

Sec. 7-231. - Enforcement by Tribe.

- (a) The Tax Office may bring a civil action in The Mohegan Tribal Court or The Mohegan Gaming Disputes Court, as appropriate, for the recovery of any tax due.
- (b) The Tax Office may seize, seal or lock personal property on the Reservation to satisfy the taxes and costs.
- (c) If an action is commenced in The Mohegan Tribal Court or The Mohegan Gaming Disputes Court and a judgment is rendered in favor of the Tax Office, an abstract of the judgment or a judgment lien may be filed for record with the town clerk or county recorder of any town/county. From the time of the filing, the amount required to be paid, together with interest and penalty set forth, shall constitute a lien upon all the real property on the Reservation owned by the judgment debtor or acquired by the judgment debtor afterwards and before the lien expires.
- (d) Execution must issue upon the judgment upon request of the Tax Office in the same manner as execution may issue upon other judgments, and sales must be held under the execution as prescribed by law.

(Ord. No. 2002-11, § 11, 12-4-2002)

Sec. 7-232. - Miscellaneous.

- (a) If any part or application of this Code is held invalid, the remainder of this Code and other sections of this Tax Code, or their application to other situations or persons shall not be affected.

- (b) Tax proceeds shall be deposited by the Tax Office in a facility to be authorized by the Tribal Council for expenditure to defray the costs of providing essential governmental services on the Reservation and for other purposes as determined by the Tribal Council. The Tax Office may execute vouchers against this fund to make refund adjustments, payments of interest, or payments for any purpose which this Code may require.
- (c) This Code may be amended by the Tribal Council in accordance with the Constitution of The Tribe. The Tax Office shall provide notice to persons of any amendment in the manner considered appropriate by the Tax Office under Tribal laws.
- (d) In the event of a conflict between provisions of this Code, and any other provision of applicable law that by its terms is applicable to taxation, this Code shall supersede and be controlling.

(Ord. No. 2002-11, § 12, 12-4-2002)

Secs. 7-233—7-239. - Reserved.