

ORDINANCE 26
TAX ADMINISTRATION ORDINANCE
SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

SECTION 1. Purpose

The purpose of this Ordinance is to provide a Tribal system for the administration of Tribal taxes, and to establish general rules applicable to the implementation of the tax ordinances of the Saginaw Chippewa Indian Tribe of Michigan. This Ordinance is enacted pursuant to the inherent sovereign powers of the Tribe and pursuant to Article VI of the Saginaw Chippewa Tribal Constitution.

SECTION 2. Definitions

The following definitions apply throughout this Ordinance.

- a. "Taxes" shall mean charges, fees, and the like assessed by Tribal Council ordinance.
- b. "Tax Agreement" shall mean the Tax Agreement Between the Saginaw Chippewa Indian Tribe of Michigan and the State of Michigan dated December 17, 2010, as approved by the Tribal Council by Resolution 11-017 on November 8, 2010.
- c. "Tribal Council" or "Council" means the Saginaw Chippewa Tribal Council, the governing body of the Tribe as established pursuant to Article IV of the Tribal Constitution.
- d. "Tribal Court" means the Tribal Court of the Saginaw Chippewa Indian Tribe of Michigan.
- e. "Director of Business Regulation" or "Director of Regulation" means the position of Director of Business Regulation as established pursuant to this Ordinance and Ordinance 30 (Business Corporation Ordinance).
- f. "Tribe" means the Saginaw Chippewa Indian Tribe of Michigan.

SECTION 3. Establishment of Taxes and Tax Rates

All Tribal taxes and tax rates shall be established by the Tribal Council by ordinance. The Director of Tribal Business Regulation shall from time to time provide comments and recommendations to the Tribal Council relating to new or existing tax ordinances, and the implementation of Tribal tax ordinances.

SECTION 4. Tribal Tax Account

The Tribe shall establish a separate Tribal Tax Account, into which all taxes collected by the Director of Regulation shall be deposited. Monies from the Tribal Tax Account shall be released or expended in accordance with the Tax Agreement or upon a written resolution of the Tribal Council or valid order of the Tribal Court. The Director of Tribal Business Regulation shall estimate from time to time the amount of money potentially needed for refunds under various Tribal tax ordinances, and the Tribal Council and Director of Regulation shall endeavor to always leave such amounts available in the Tribal Tax Account.

SECTION 5. Director of Tribal Business Regulation

The position of Director of Tribal Business Regulation is hereby established. The Director of Tribal Business Regulation shall be an employee of Tribal Administration. The Director of Regulation shall be appointed and supervised by the Tribal Administrator or in the absence of the Tribal Administrator, Assistant Tribal Administrator, and shall be subject to personnel policies applicable to other employees of the Tribal Administration.

SECTION 6. Duties of Director of Business Regulation

The Director of Business Regulation shall have the following authorities and duties on behalf of the Tribe:

- a. To determine, assess, and collect all taxes authorized by Tribal ordinances. Assessments and determinations of the Director of Regulation are presumed to be correct.
- b. To issue Director of Regulation's Orders to enforce the provisions of, and aid in the implementation of, Tribal tax ordinances and the Tax Agreement.
- c. To make or cause to be made examinations of places, records, or documents relating to the implementation of Tribal taxes and the Tax Agreement.
- d. To redetermine incorrect or erroneous assessments, and to issue amended assessments or refunds as necessary.
- e. To hear and rule upon requests for redetermination by any aggrieved person relating to a tax assessment or order of the Director of Regulation.
- f. To administer oaths, conduct hearings, and to compel by administrative subpoena the attendance of witnesses or production of documents necessary for the implementation of Tribal tax ordinances or appropriate to other duties of the Director of Regulation.

- g. To seek on behalf of the Tribe such orders from the Tribal Court as are necessary to aid in the implementation of Tribal tax ordinances.
- h. To develop or promulgate such rules and procedures as are necessary to implement Tribal tax ordinances. Such rules and procedures may include but are not limited to the creation of forms; the development of instructions and interpretations; the setting of dates and other filing requirements; the coordination of necessary investigations; the computation of taxes; and the enforcement of tax or other liabilities. The Director of Regulation may promulgate rules and procedures by orders that are approved in writing by the Tribal Administrator. Promulgated rules and procedures will become valid and binding laws of the Tribe when they are approved by the Tribal Administrator and filed with the Tribal Clerk. Regulations and Forms shall be posted at the Tribal Clerk's Office for a period of seven (7) days after approval by the Tribal Administrator. The Tribal Administrator shall inform the Council of the promulgation of regulations no later than 30 days after his approval.
- i. To make recommendations annually to the Tribal Council for the setting of interest rates applicable to refunds paid to a taxpayer.
- j. To make recommendations to the Tribal Council regarding the establishment of taxes, the setting of tax rates, and the amending of tax laws in effect.
- k. To undertake any other activity that is reasonable and necessary to implement Tribal tax ordinances and the Tax Agreement.

SECTION 7. Legal Assistance

The Director of Tribal Business Regulation shall be represented by the Tribal General Counsel's office.

SECTION 8. Director of Tribal Business Regulation Records

- a. The Director of Tribal Business Regulation shall maintain complete and accurate records relating to the collection of all taxes and implementation of Tribal tax ordinances and the Tax Agreement. Such records shall be maintained at the office of the Director of Tribal Business Regulation or at another location with the approval of the Tribal Administrator.
- b. Director of Tribal Business Regulation records shall be subject to audit upon the direction of the Tribal Council, and audit results shall be made available to the Tribal Council.

- c. Director of Tribal Business Regulation records relating to individual taxes or taxpayers shall be confidential private records and shall not be released to the public. They shall be released upon the taxpayer's request to the taxpayer, to persons authorized by the taxpayer, to others as may be allowed by promulgated rules of the Director of Regulation, or to others as required by the Tax Agreement or upon order of the Tribal Court. Unauthorized intentional disclosure of tax records by the Director of Regulation or other employee shall be cause for disciplinary action or termination of employment.

SECTION 9. Redeterminations by Director of Tribal Business Regulation

- a. An aggrieved person may seek a redetermination by the Director of Tribal Business Regulation of a Director of Regulation's decision relating to the assessment or payment of taxes, or relating to the Director of Regulation's exercise of other powers under Tribal ordinances. Unless another period is specified by a tax ordinance, an aggrieved person may file for a redetermination of the amount of taxes assessed or paid within one year following the due date for the payment of such taxes. Unless another period is specified by a tax ordinance, an aggrieved person may file for a redetermination of any other Director of Regulation decision within one year following the date of the issuance of the decision sought to be redetermined. The redetermination process shall be commenced by the filing of a Request for Redetermination with the Director of Regulation. The Request for Redetermination shall set forth the facts and arguments supporting the request and shall identify the errors of the Director of Regulation and specifically identify any refunds claimed to be due. A Request for Redetermination filed later than the time limits provided by this section or other applicable tax ordinance shall not be valid and shall not be considered by the Director of Tribal Business Regulation.
- b. Upon receipt of a Request for Redetermination, the Director of Tribal Business Regulation shall provide the taxpayer a reasonable opportunity to present argument to the Director of Regulation, either in writing or orally. After hearing argument and considering relevant evidence, the Director of Regulation shall issue a final decision on the matter. The Director of Regulation may order such relief as he/she deems appropriate, including a refund of taxes paid.

SECTION 10. Appeals to Tribal Court

- a. After the Director of Tribal Business Regulation has issued a final decision relating to a Request for Redetermination, the aggrieved person may appeal the final Director of Tribal Business Regulation decision to the Tribal Court. The Tribe hereby waives its sovereign immunity in a limited fashion to allow such

appeal to Tribal Court pursuant to the provisions of this section. An appeal shall be filed within thirty days after the final Director of Regulation decision has been mailed to the taxpayer. An appeal filed later than such period shall not be valid, shall not be considered by the Tribal Court, and shall not be subject to the limited waiver of sovereign immunity provided by this section.

- b. An appeal under this section shall be heard by the Tribal Court without a jury. The Tribal Court shall decide the appeal on the record of proceedings before the Director of Tribal Business Regulation, as certified by the Director of Tribal Business Regulation. The Court shall uphold the final decision of the Director of Tribal Business Regulation if it was reasonable, supported by substantial evidence, and not arbitrary or capricious. If the Court finds that the decision of the Director of Tribal Business Regulation was not reasonable, was not supported by substantial evidence, or was arbitrary or capricious, the Court may remand the matter back to the Director of Tribal Business Regulation or may make its own determination on the matter. The Tribal Court may order a refund to the taxpayer or make other orders as appropriate. However, the Tribal Court shall not award damages against the Tribe or Director of Tribal Business Regulation, and shall not issue any award for attorney's fees.
- c. Subject to the provisions of the Tax Agreement, the decision of the Tribal Court shall be final, and, notwithstanding any other ordinance, shall not be subject to an appeal to the Saginaw Chippewa Tribal Appellate Court or any other court.

SECTION 11. General Tribal Court Jurisdiction

The Tribal Court is hereby granted exclusive subject matter jurisdiction over causes of action that may arise under of any Tribal tax ordinance or any cause of action that may arise under the Tax Agreement.

SECTION 12. Enforcement Actions

The Director of Tribal Business Regulation shall have the authority to bring actions in the name of the Saginaw Chippewa Indian Tribe in any court of competent jurisdiction for the collection of any unpaid taxes or penalties, or for the enforcement of the provisions of any Tribal tax ordinance. The Director of Tribal Business Regulation may seek any appropriate civil remedy in such actions. The Saginaw Chippewa Tribal Court shall have jurisdiction over any claim or controversy as provided by the Tax Agreement.

SECTION 13. Sovereign Immunity

Nothing in this Ordinance or any Tribal tax ordinance shall be construed as a waiver of the sovereign immunity of the Tribe or its Director of Tribal Business Regulation or any

subordinate government unit except to the extent such immunity is explicitly waived in such ordinance, the Tax Agreement or by resolution of the Tribal Council. No enforcement action taken by the Director of Regulation shall be construed as a waiver of sovereign immunity of the Director of Regulation or the Tribe. Nothing in this Ordinance or any Tribal tax ordinance shall be construed as a waiver of sovereign immunity with regard to any counterclaim or similar assertion relating to an enforcement action of the Director of Regulation.

SECTION 14. Severability of Provisions.

If any provision under this Ordinance is later found to be unconstitutional it shall be considered null and void, but the rest of the provisions in this Ordinance shall remain in effect.

SECTION 15. Effective Date

This Ordinance shall become effective immediately.

Legislative History

Ordinance 26-Tribal Tax Administration, enacted by Tribal Council Resolution No. 06-050 approved on March 1, 2006. Revised by Resolution 11-035 approved on January 26, 2011. Sections 2, 4, 6, 8, 10, 11, 12, 13 amended and new Section 14 added by Resolution 11-076 approved on May 23, 2011. Section 6.h. amended by Resolution 11-089 approved on June 1, 2011.