



HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

HO-CHUNK NATION LEGISLATURE AUTHORIZATION TO PLACE THE HO-CHUNK NATION TAX CODE (5 HCC § 10) OUT FOR FORTY-FIVE DAY PUBLIC COMMENT

RESOLUTION 09-18-18 C

- WHEREAS,** on November 1, 1994, the United States Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago Tribe; and
- WHEREAS,** the Ho-Chunk Nation ("Nation") is a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934; and
- WHEREAS,** Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") grants the Ho-Chunk Nation Legislature ("Legislature") the power to make laws, including codes, ordinances, resolutions, and statutes; and
- WHEREAS,** Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power; and
- WHEREAS,** Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget; and
- WHEREAS,** Article V, Section 2(e) of the Constitution grants the Legislature the power to raise revenue, including the power to levy and collect taxes and license fees; and
- WHEREAS,** Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions; and
- WHEREAS,** Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation; and
- WHEREAS,** Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its Legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers; and
- WHEREAS,** the Legislature adopted the Ho-Chunk Nation Tax Code (5 HCC § 10) by Resolution 5-03-11C; and

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WHEREAS, the Legislature revised and amended the Tax Code by Quick Passage Resolution 7-19-16L to include an alcohol tax; and

WHEREAS, the Legislature, in furtherance of the goals of protecting the health, safety, welfare and economic well-being of the Nation, its Members, and future generations, finds it appropriate to consider additional amendments to the Tax Code; and

WHEREAS, as the Legislature continually reviews the Nation's appropriations and tribal government budgets, it recognizes the importance of increasing revenues for the Nation to support tribal government operations and programs for the continued benefit of the tribe and its Members; and

WHEREAS, as a result, the Legislature will consider amendments to the Tax Code after a period of public review and comment; and

WHEREAS, the Ho-Chunk Nation Legislature passed the *Legislative Organization Act* (2 HCC § 11), which was last amended on June 23, 2015; and

WHEREAS, the *Legislative Organization Act* provides the procedures for enacting or amending a Nation law; and

WHEREAS, Section 44, subparagraph d(1)(a) of the *Legislative Organization Act* provides that the Public Review period for consideration of proposed laws or amendments will typically be forty-five (45) days, but may be shortened or lengthened as deemed necessary; and

NOW THEREFORE, BE IT RESOLVED that the Legislature, pursuant to its Constitutional authority, hereby approves placing the Ho-Chunk Nation Tax Code (5 HCC § 10), with preliminary proposed amendments, out for forty-five (45) day public comment;

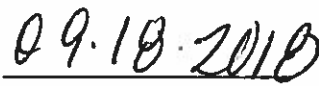
BE IT FURTHER RESOLVED that the Office of Legislative Counsel shall post the Tax Code (5 HCC § 10) on the Nation's website and the forty-five (45) day comment period shall begin on the day of posting on the webpage.

CERTIFICATION

I, the undersigned, as Secretary of the Ho-Chunk Nation Legislature, hereby certify that the Legislature of the Ho-Chunk Nation, composed of **13 members** of whom **9** constituting a quorum were present at a meeting duly called and convened and held on the **18th day of September, 2018**, that the foregoing resolution was adopted at said meeting by an affirmative vote of **9 members, 0 opposed, and 0 abstaining**, pursuant to the Article V, Section 2 (a) and (x) of the Constitution of the Ho-Chunk Nation approved by the Secretary of the Interior on November 1, 1994, and that the foregoing resolution has not been rescinded or amended in any way. I further certify that this is a verified copy of said resolution.



Andrea Estebo, Tribal Secretary



Date



HO-CHUNK NATION CODE (HCC)

TITLE 5 – BUSINESS AND FINANCE CODE

SECTION 10 – TAX CODE

ENACTED BY THE LEGISLATURE: MAY 3, 2011

AMENDED AND RESTATED: July 19, 2016

CITE AS: 5 HCC § 10

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CHAPTER I
GENERAL

1. Authority.

a. Article I of the Constitution of the Ho-Chunk Nation provides:

Section 1. Territory.

The territory of the Ho-Chunk Nation shall include all lands held by the Nation or the People, or by the United States for the benefit of the Nation or the People, and any additional lands acquired by the Nation or by the United States for the benefit of the Nation or the People, including but not limited to air, water, surface, subsurface, natural resources and any interest therein, notwithstanding the issuance of any patent or right-of-way in fee or otherwise, by the governments of the United States or the Ho-Chunk Nation, existing or in the future.

Section 2. Jurisdiction.

The jurisdiction of the Ho-Chunk Nation shall extend to all territory set forth in Section 1 of this Article and to any and all persons or activities therein, based upon the inherent sovereign authority of the Nation and the People or upon Federal law.

b. Article IV, Section 2 of the Constitution authorizes the legislative branch to make laws and appropriate funds in accordance with Article V.

c. Article V, Section 2(a) of the Ho-Chunk Nation Constitution gives the Ho-Chunk Nation Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

d. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

e. Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget.

f. Article V, Section 2(e) of the Constitution grants the Legislature the power to raise revenue, including the power to levy and collect taxes and license fees.

g. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

h. Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.

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i. Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers.

2. General Purpose.

a. It being necessary to strengthen the Tribal government by licensing and regulating certain conduct within the Tribal jurisdiction, provide financing for the current expenses of Tribal government and the expansion of Tribal government operations and services, and in order for the Ho-Chunk Nation to exercise its confirmed governmental responsibilities efficiently and effectively, the purpose of this *Tax Code* (5 HCC § 10) is to provide straightforward, fair, and efficient procedures, to provide for the licensing and regulation of certain conduct, and the levy and collection of certain revenue and taxes for the benefit of the Ho-Chunk Nation:

(1) The Tribal government must generate revenue for the operation, maintenance and improvement of essential Tribal governmental services and programs including, by way of illustration and not limitation, a judiciary, health services, and social and cultural preservation programs;

(2) The imposition of taxes is an appropriate method of generating revenues for the Ho-Chunk Nation and paying for a portion of the costs of governmental services and programs incident to the preservation of tribal existence and the continued economic development of the Ho-Chunk Nation;

(3) The General Council passed Resolution 10-11-03 J approving the development and creation of a Healing Center for Addiction in order to secure future Ho-Chunk Nation Members' health and well-being. Subsequently, the Legislature passed Resolution 11-17-09 M which provided that the Legislature "will financially support the Nation's efforts to complete a Healing Center to secure our future generations' health and well-being." Pursuant to Section 14, a portion of the revenue raised as a result of this *Tax Code* (5 HCC § 10) shall be designated for the creation of, and potential continued funding of, a Ho-Chunk Nation Healing Center for Addiction;

(4) Article V, Section 2, subparagraph (s) of the Ho-Chunk Nation Constitution provides that a power of the Legislature is "[t]o promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation;". To accomplish this power, in furtherance of such objectives, the Legislature needs to raise revenue to:

(a) Develop a program intended to fund Health Insurance costs associated with covering the Health insurance expenses of all Ho-Chunk nation Tribal Members regardless of where they may live;

(b) Develop a program intended to fund a pension plan for Ho-Chunk Nation Tribal Elders who have been employees of the Nation;

(c) Fund programs to prevent Ho-Chunk Nation Tribal Members, particularly youth, from using or becoming addicted to tobacco products;

(d) Fund programs that benefit or provide assistance to Tribal Members who are Disabled or a Person with a disability;

(e) Fund a potential Ho-Chunk Nation Veterans Home Ownership Program;

(f) Fund such other programs and services intended to promote the Nation's interests as are within the authority of the Legislature pursuant to the Constitution of the Nation; and

(5) Article V. Section 2. Subparagraph (k) of the Constitution of the Ho-Chunk Nation provides that the power of the Legislature is "[t]o acquire or purchase lands for the benefit of the Nation and its members;" To accomplish this power, the Legislature needs to raise revenue to purchase land and pay for capital projects on existing and newly acquired land.

3. Definitions. Throughout this *Tax Code* (5 HCC § 10) the following words shall have the following meaning:

a. "Alcohol" means any alcoholic beverage that requires an individual to be of a certain age to possess or consume alcohol in accordance with Wisconsin State Law.

b. "Attorney General" means the Executive Director or Interim Director of the Ho-Chunk Nation Department of Justice who pursuant to the Ho-Chunk Nation Constitution, *Department of Justice Establishment and Organization Act of 2001* (1 HCC § 8), and *Confirmation Process of Executive Directors for the Ho-Chunk Nation Act* (2 HCC § 9); is appointed by the President and confirmed by the Legislature.

c. "Business" and "Business Activity" shall mean all activities or acts, personal, corporate or otherwise, engaged in with the object of profit, gain, benefit or advantage, either directly or indirectly, wholly or in part, within the Nation's enterprises.

d. "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of Section 3, subsection d. (2)).

e. "Cigarette" means:

(1) Any roll of tobacco wrapped in paper or wrapped in any substance not containing tobacco; and

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be

offered to, or purchased by, consumers as a cigarette described in Section 3, subparagraph d. (1).

f. “Cigarette paper” means paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

g. “Cigarette tube” means cigarette paper made into a hollow cylinder for use in making cigarettes.

h. “Constitution” shall mean the Constitution of the Ho-Chunk Nation.

i. “Consumer” means and includes any Person, regardless of whether or not the Person is a Tribal Member, who consensually purchases, receives or comes into possession of:

(1) Fuel from a retailer owned and operated by the Ho-Chunk Nation; or

(2) Tobacco products from a Ho-Chunk Nation retailer located within the interior boundaries of the Ho-Chunk Nation.

j. “Cost of Collection” shall mean expenses and costs incurred while collecting or attempting to collect a tax obligation and shall include, but not be limited to, reasonable attorney’s fees, costs of advertisement, mileage, copies, service fees, seizure and sale, and court costs.

k. “Department of Business” means a constitutionally required Executive Department whose mission, pursuant to the *Department of Business Establishment and Organization Act of 2001* (1 HCC § 3), is to maximize the profitability of all the Nation’s business enterprises through effective management and administration. In doing so, the Department shall safeguard the interests of the Nation, enhance the sovereignty of the Nation, and exercise stewardship over those resources committed to it by the Nation and foreign jurisdictions.

l. “Department of Justice” means a constitutionally required Executive Department whose mission, pursuant to the *Department of Justice Establishment and Organization Act of 2001* (1 HCC § 8), is to protect the legal rights and interests of the Nation and the collective rights and interests of Tribal Members. In doing so, the Department shall safeguard the interests of the Nation, enhance the sovereignty of the Nation, and exercise stewardship over those resources committed to it by the Nation and foreign jurisdictions.

m. “Department of Treasury” means a constitutionally required Executive Department whose mission, pursuant to the *Department of Treasury Establishment and Organization Act of 2001* (1 HCC § 12) is to safeguard the assets of the Nation and provide accurate and timely information to enable management to make sound decisions. In doing so, the Department shall safeguard the interests of the Nation, enhance the sovereignty of the Nation, and exercise stewardship over those resources committed to it by the Nation and foreign jurisdictions.

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n. "General fund" means pursuant to the *Finance Manual* (5 HCC § 5), the general operating fund of the Nation. It is used to account for all financial resources except for those required to be accounted for in another fund.

o. "Legislature" shall mean members of the Legislature officially convened to exercise Constitutional powers pursuant to the Constitution of the Ho-Chunk Nation.

p. "Merchandise" means all tangible personal property sold by retail on the Nation's lands, except it shall not include the following: items provided on a complimentary basis, sales of other items governed and taxed under this Code (including Fuel, Tobacco, Packaged Alcohol, or Transient Lodging), or sales by non-taxable retailers.

q. "Native Brand Tobacco Products" means all tobacco products that were not manufactured by a major brand tobacco company and are manufactured on Ho-Chunk Nation trust land or trust land of another federally recognized Native American Tribe and sold by a retailer located on Ho-Chunk Nation trust land.

r. "Person" means and includes any natural person, company, Tribally owned corporation, partnership, corporation, commission, government agency, joint venture, association, trust, or other political or identifiable entity to which this *Tax Code* (5 HCC § 10) can be applied.

s. "Pipe Tobacco" means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

t. "Retailer" means and includes any Person or entity who in the ordinary course of business:

(1) Sells any fuel within the boundaries of a Ho-Chunk Nation Business to another Person or entity; or

(2) Sells any tobacco product within the boundaries of the Ho-Chunk Nation or the jurisdiction of its enterprises to another Person or entity; or

(3) Sells any alcohol within the boundaries of the Ho-Chunk Nation or the jurisdiction of its enterprises to another Person or entity.

u. "Revenue generated by this *Tax Code*" shall mean all money raised by the taxes charged pursuant to the terms of this *Tax Code* (5 HCC § 10) minus any expenses associated with payment of any costs required by:

(1) Preparing any reports required by this *Tax Code* (5 HCC § 10);

(2) Collecting (cost of collection) of a particular tax;

(3) Hiring an internal auditor; and

(4) Fulfilling any other duty or obligation incidental to the administration of this *Tax Code* (5 HCC § 10).

v. “Roll-your-own Tobacco” means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

w. “Sale” or “Sales” or their derivatives means and includes all sales, barter, trades, exchanges, or other transfers of ownership for value of fuel, merchandise, tobacco products or alcohol from a retailer to any person no matter how characterized and the rental, leasing, or other transfer of actual or constructive possession and right to use fuel or tobacco products for value received from a retailer to any person no matter how characterized.

x. “Smokeless Tobacco” definitions relating to smokeless tobacco include:

(1) “Chewing Tobacco” means any leaf tobacco that is not intended to be smoked.

(2) “Smokeless Tobacco” means any snuff or chewing tobacco.

(3) “Snuff” means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

y. “Tobacco products” means, except for all Native Brand Tobacco Products, all tobacco products sold by a Ho-Chunk Nation retailer. Tobacco products include, but are not limited to, cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco. The definition of tobacco products does not include products sold by a Ho-Chunk Nation retailer to wholesalers who intend to resell the product outside the boundaries of the Ho-Chunk Nation or the jurisdiction of the Nation’s enterprises.

z. “Transient Lodging” means the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, condominium, townhome or other lodging, furnished by the Nation or a business entity of the Nation unless the occupancy is for a period of more than thirty (30) calendar days.

aa. “Transient Lodging Establishment” shall mean an establishment within lands subject to the jurisdiction of the Ho-Chunk Nation, containing guest rooms or overnight lodging units, hereinafter referred to as “transient lodging units”, with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. By way of illustration and not limitation, transient lodging establishment includes hotels, motels, inns, boardinghouses, tourist homes, campgrounds, resorts, R.V. parks, mobile homes or house trailers. If an occupant occupies real property for thirty (30) consecutive calendar days or more with the intent to make the occupancy a permanent place of residence, it shall constitute a rental or lease of real property and shall be exempt from the provisions of this *Tax Code* (5 HCC § 10).

bb. “Trial Court” means a constitutionally required segment of the judiciary which pursuant to the *Judiciary Establishment Act* (1 HCC § 1) consists of a Chief Trial Judge and other Associate

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Judge(s) as deemed necessary by the Legislature and pursuant to Article VII, Section 6 has certain proscribed powers.

cc. “Tribal Land” means all lands held by the Nation or a Person, or by the United States for the benefit of the Nation or the People, and any additional lands acquired by the Nation or by the United States for the benefit of the Nation or the People, including but not limited to air, water, surface, subsurface, natural resources and any interest therein, notwithstanding the issuance of any patent or right-of-way in fee or otherwise, by the governments of the United States or the Ho-Chunk Nation, existing or in the future.

dd. “Tribal Tax Stamp” means an officially approved tax stamp of the Ho-Chunk Nation that is applied to all tobacco packages intended for sale by a Ho-Chunk Nation retailer.

ee. “Working Days” means the calendar days that fall within the week; Monday through Friday excluding holidays. “Calendar Days” means every day of the week including weekend days, but excluding holidays. A date is considered a holiday if it is recognized as such by the Nation’s employment law currently the *Employment Relations Act* (6 HCC § 5).

4. Severability Clause. Except for Section 5, if any part of this *Tax Code* (5 HCC § 10) is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the remainder of this law. Except for Section 5, the Ho-Chunk Nation Legislature hereby declares the provisions of this *Tax Code* (5 HCC § 10) to be severable.

5. Sovereign Immunity.

a. The Ho-Chunk Nation specifically and unequivocally declares its sovereign immunity and does not waive its sovereign immunity, expressly or impliedly, under any provision of this *Tax Code* (5 HCC § 10), and nothing in this *Tax Code* (5 HCC § 10) shall be deemed to waive the sovereign immunity of the Ho-Chunk Nation or any of its enterprises, officers, agents, or employees.

b. The Ho-Chunk Nation declares that there is no liability on the part of the Ho-Chunk Nation, its agencies, agents, or employees for any damages which may occur as a result of reliance upon or conformity with the requirements of this *Tax Code* (5 HCC § 10).

c. Any suit or enforcement action commenced under this *Tax Code* (5 HCC § 10), by the Ho-Chunk Nation Department of Justice, or its authorized representative, shall not constitute a waiver of sovereign immunity, regardless of whether the Tribal Member(s) or non-Tribal Member(s) being sued files a counterclaim. For purposes of this *Tax Code* (5 HCC §10) for a waiver of the Nation’s sovereign immunity to be effective, the Legislature must adopt a Resolution that unequivocally provides that the Legislature is waiving the Nation’s sovereign immunity.

d. Pursuant to Article XII, Sections 1 and 2 of the Constitution, the Legislature in taking any action will be deemed to not have waived the Nation’s sovereign immunity from suit, unless the Legislature expressly waives the Nation’s sovereign immunity.

6. Effective Date.

a. This *Tax Code* (5 HCC § 10) applies to all sales and services relating to of Fuel, Lodging, Merchandise, Services, Commercial Leasing, Alcohol and Tobacco Products on Tribal Lands occurring thirty (30) calendar days after adoption of this *Tax Code* (5 HCC § 10) by the Ho-Chunk Nation Legislature. The date of adoption; along with the date that the *Tax Code* (5 HCC § 10) shall apply to all sales and services relating to of Fuel, Lodging, Merchandise, Services, Commercial Leasing, Alcohol, Tobacco Products and Alcohol, shall be listed in the Legislative History of this *Tax Code* (5 HCC § 10).

b. Any amendment to this *Tax Code* (5 HCC § 10), unless noted in the adopting Resolution for the amendment, shall be effective immediately after adoption and the date of the amendment shall be listed in the Legislative History of this *Tax Code* (5 HCC § 10).

7. Report and Payment of Taxes.

a. The Business Department of the Ho-Chunk Nation shall submit to the Finance Committee of the Legislature on a monthly basis a report showing:

(1) The amount of money collected from the:

- (a) Fuel tax, pursuant to the requirements of Chapter II;
- (b) Transient Lodging tax, pursuant to the requirements of Chapter III;
- (c) Merchandise Sales tax, pursuant to the requirements of Chapter IV;
- (d) Tobacco tax, pursuant to the requirements of Chapter V; and
- (e) Alcohol Tax, pursuant to the requirements of Chapter VI.

(2) The cost of collection of the:

(a) Fuel Tax. The report on the cost of collection shall include:

1 An estimate as to whether or not the Business Department believes that the additional charge has caused a decrease in the sale of fuel by the Nation's retailers;

2 An estimate of the administrative cost to the Nation of charging the Fuel Tax to the consumer; and

3 Any other information requested to be included in the report by the Ho-Chunk Nation Legislature.

(b) **Transient Lodging Tax.** If, within any given month, the Business Department determines to pass on all or a portion of the tax as a fee on to the guest of the transient lodging establishment, the report on the cost of collection shall include:

1 An estimate as to whether or not the Business Department believes that the additional charge has caused a decrease in the number of guests staying at any of the Nation's transient lodging establishments;

2 An estimate of the administrative cost to the Nation of passing on the additional fee to the guest; and

3 Any other information requested to be included in the report by the Ho-Chunk Nation Legislature.

(c) **Merchandise Sales Tax.** The report on the cost of collection shall include:

1 An estimate as to whether or not the Business Department believes that the additional charge has caused a decrease in the sale of Merchandise products by the Nation's retailers;

2 An estimate of the administrative cost to the Nation of charging the Merchandise Sales tax to the consumer; and

3 Any other information requested to be included in the report by the Ho-Chunk Nation Legislature.

(d) **Tobacco Tax.** The report on the cost of collection shall include:

1 An estimate as to whether or not the Business Department believes that the additional charge has caused a decrease in the sale of tobacco products by the Nation's retailers;

2 An estimate of the administrative cost to the Nation of charging the Tobacco Tax to the consumer; and

3 Any other information requested to be included in the report by the Ho-Chunk Nation Legislature.

(e) **Alcohol Tax.** The report on the cost of collection shall include:

1 An estimate as to whether or not the Business Department believes that the additional charge has caused a decrease in the sale of alcohol by the Nation's enterprises;

2 An estimate of the administrative cost to the Nation of charging the Alcohol Tax to the consumer; and

3 Any other information requested to be included in the report by the Ho-Chunk Nation Legislature.

b. The Business Department shall record the taxes collected and report to the Nation's Treasury Department, who will then record the tax revenues received and direct such funds into separate restricted, special revenue accounts based on each category of taxes. The Treasury Department and Business Department shall report such taxes collected and revenues entered to the Finance Committee of the Legislature the month following collection. This monthly report shall be delivered to the Legislative Finance Committee before the twentieth 20th day of each month. If the 20th day falls on a weekend or a holiday, the report shall be transmitted by the first working day after the twentieth (20th) day of the month. Based on the allocation percentage requirements provided in Section 14, the Treasury Department shall direct said tax revenues into separate restricted, special revenue accounts, including the remaining revenues not specifically directed, which shall be directed and recorded to the General Fund.

c. The Finance Committee may approve or accept reports issued by the Department of Business and Treasury, or take such other action as the Committee deems proper.

d. A person or entity liable for any tax imposed by this *Tax Code* (5 HCC § 10) shall keep and maintain accurate records in such form as to make it possible to determine the tax due under this *Tax Code* (5 HCC § 10).

8. Interpretation of Tax Code.

a. This *Tax Code* (5 HCC § 10) shall be liberally construed so as to effectuate the general purpose hereof.

b. Except where specifically noted in this *Tax Code* (5 HCC §10), pursuant to Article VII, Section 5 of the Ho-Chunk Nation Constitution, all cases and controversies arising as a result of this *Tax Code*, shall be filed in the Ho-Chunk Nation Trial Court.

9. Amendments.

a. Pursuant to the *Legislative Organization Act* (2 HCC § 11), the Ho-Chunk Nation Legislature may amend, modify, alter or repeal this *Tax Code* (5 HCC § 10).

b. Unless noted in the adopting Resolution for the amendment, any amendment to this *Tax Code* (5 HCC § 10) shall be immediately effective after adoption and the date of the amendment shall be listed in the Legislative History of this *Tax Code* (5 HCC § 10).

c. Notwithstanding any provisions of the *Legislative Organization Act*, in making and reviewing proposals to amend this *Tax Code* (5 HCC § 10), the Legislature may vote to only place specific chapters of the *Tax Code* (5 HCC § 10) out for public comment.

10. Conflict with Laws and Preemption.

a. With the exception of the Ho-Chunk Nation Constitution, in the event of a conflict between provisions of this *Tax Code* (5 HCC § 10) or any other provision of another law that, by its terms, is applicable to taxation, this *Tax Code* (5 HCC § 10) shall supersede any other provision or law and is controlling.

b. With the exception of the Ho-Chunk Nation Constitution, in the event of a conflict between provisions of this *Tax Code* (5 HCC § 10) or any other provision of law that, by its terms, is applicable to taxation, this *Tax Code* (5 HCC § 10) shall preempt and nullify any other provision or law and is controlling.

11. Administration & Enforcement.

a. Duties of the Business Department. The Nation's Business Department shall have the authority to administer the application of this *Tax Code* (5 HCC §10) and may adopt necessary procedures or guidelines consistent with this code.

b. Duties of the Department of Justice. The Nation's Justice Department shall have authority to enforce this *Tax Code* (5 HCC §10) and may demand access to, and inspect or examine all records created by the Business Department and Treasury Department relevant to proper enforcement of this *Tax Code*. The Justice Department is also authorized to investigate complaints of violations of this Code, by use of its subordinate divisions; or to prosecute violations of this Code.

c. Duties of the Treasury Department. The Nation's Treasury Department shall have authority, upon approval of the Nation's President, to inspect or examine all papers, books and records created by the Department of Business and relevant to determining if the appropriate amount of tax has been paid pursuant to this *Tax Code* (5 HCC §10), and may retain such independent auditors as are necessary to examine or audit any records related to the administration, collection or accounting of the taxes addressed in this *Tax Code*.

d. The Business Department, Treasury Department and Justice, and any other appropriate Executive Branch Department, shall have authority to adopt any necessary procedures or guidelines intended to assist in the administration or enforcement of this *Tax Code* (5 HCC §10), on the basis that any such procedures or guidelines shall be provided to all Departments and consistent with the Nation's laws.

e. The Legislature reserves the authority, under Article V, Section 2 of the Constitution, to review any action taken by the Executive Branch in exercising powers delegated by the Legislature in this *Tax Code* (5 HCC §10) and may be assisted by necessary Legislative staff in carrying out its Constitutional review authority. The Legislative Financial Examiner shall have authority to engage in internal audit functions under this Code, based on Legislative authorization to do so.

f. The Departments of Business and Treasury are authorized to maintain and preserve complete, accurate and detailed records of all tax revenues received and disbursed.

g. The Department of Business, after consultation with the President of the Nation and the Department of Justice, may determine whether or not to pass the transient lodging tax imposed pursuant to this *Tax Code* (5 HCC §10) as an additional fee to the occupant of a transient lodging establishment. If the Business Department takes no action with respect to whether or not to pass on the transient lodging tax as an additional fee, the Transient Lodging Establishment shall charge five dollars (\$5.00) per night, per room, per stay as a fee to any occupant of a transient lodging establishment. The Business Department shall have the same authority to pass on the Merchandise Sales Tax under this Code as a fee to the ultimate consumer.

h. The Legislature retains the authority to suspend the charging of, or the imposition of, a tax on a particular product(s), after the recommendation of the Business Department.

12. Recovery of Cost of Collection.

a. If an individual(s) challenges the imposition of a tax or fee in the Ho-Chunk Nation Trial Court and his or her or their lawsuit is not successful, the individual(s) may be held liable for all costs of collection incurred to collect the tax or fee.

b. It shall be up to the Trial Court to determine whether or not the individual(s) is held liable for the costs of collection incurred to collect the tax or fee. Costs of collection may include, but are not limited to, reasonable attorney's fees, cost of advertising, mileage, copies, service fees, court costs and other costs and expenses incurred while collecting or attempting to collect a tax obligation.

13. Violations.

a. It shall be unlawful and a violation of this *Tax Code* (5 HCC § 10) for any person to do any of the following:

(1) Aid, abet, or assist another in an attempt to evade the payment of the tax or fee, or any part of the tax or fee, imposed by this *Tax Code* (5 HCC § 10);

(2) Knowingly possess or sell, or aid, abet, or assist another in possessing or selling, cigarettes or other tobacco products which do not bear the appropriate stamp as required by Chapter V of this Code ; or

(3) Violate any other provision of this *Tax Code* (5 HCC § 10).

b. Penalties.

(1) Pursuant to the *Hocak Nation Exclusion and Removal Act* (3 HCC § 10), the Attorney General of the Ho-Chunk Nation may institute legal proceedings to exclude any person from the

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lands and facilities of the Ho-Chunk Nation and to have the Ho-Chunk Nation Trial Court determine conditions upon which that person may remain for violation of this *Tax Code* (5 HCC § 10).

(2) Any person or taxpayer who violates any provision of this *Tax Code* (5 HCC §10) for the purpose of evading the payment of taxes shall be guilty of an offense punishable by a fine not to exceed five hundred dollars (\$500.00) for each separate violation.

(3) Any person who knowingly files any false report or return, or who knowingly fails to file any report or return, or who otherwise knowingly violates any provisions of this *Tax Code* (5 HCC §10) shall pay a civil penalty of five hundred dollars (\$500.00) per occurrence.

(4) Every retailer who fails to collect the taxes imposed by this *Tax Code* (5 HCC §10) shall be liable for the full amount of the taxes owed, plus interest at the rate of six percent (6.0%) per annum.

(5) Except if specifically noted within this *Tax Code* (5 HCC §10), jurisdiction is hereby conferred upon the Ho-Chunk Nation Trial Court over enforcement actions for violations of this *Tax Code* (5 HCC §10).

14. Allocation of Revenue Generated by the *Tax Code* (5 HCC § 10). As noted in the Purpose Section of this *Tax Code* (5 HCC § 10), a portion of the revenue raised as a result of this *Tax Code* (5 HCC § 10) shall be designated for the creation of, and potential continued funding for, the operation of a Ho-Chunk Nation Healing Center for Addiction, and to develop a program to potentially fund Health Insurance costs associated with covering Ho-Chunk Nation Tribal Members, to consider development of a program to prevent Ho-Chunk Nation Members from being addicted to tobacco products, to fund capital projects and land acquisitions, for potential grants to Ho-Chunk Nation Members with disabilities, for the potential establishment of a Veterans Home Ownership program and for the implementation of the Criminal Code and Traffic Code. To accomplish this purpose the *Tax Code* (5 HCC § 10) provides the following directions on the use of the revenue generated by the *Tax Code* (5 HCC § 10):

a. Allocation of money for the creation of, and potential continued support for, the Ho-Chunk Nation Healing Center for Addiction. All of the revenue generated from the Alcohol Tax, Section 55, of this *Tax Code* (5 HCC § 10) shall and in addition up to twenty-five percent (25%) of the revenue generated under all other remaining sections of this *Tax Code* (5 HCC § 10) may be allocated to a special revenue account dedicated to the Ho-Chunk Nation Healing Center for Addiction. The Legislature shall make a determination annually, when reviewing and approving annual fiscal year budgets, concerning the funding amount and percentage of revenues that shall be directed into said special revenue account in the Nation's Treasury Department. The initial percentage upon enactment of this Code, within the first fiscal year, shall be 25%.

b. Allocation of money to develop a program that potentially addresses Tribal Member Health Insurance costs. Up to twenty percent (20%) of the money generated from the *Tax Code* (5 HCC § 10) shall be allocated to a special revenue account dedicated to potentially funding the Nation's

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effort to fund Health Insurance costs associated with covering Ho-Chunk Nation Tribal Members covered by the Nation's Health Insurance plan. The Legislature shall make a determination annually, when reviewing and approving annual fiscal year budgets, concerning the funding amount and percentage of revenues that shall be directed into said special revenue account in the Nation's Treasury Department. The initial percentage upon enactment of this Code, within the first fiscal year, shall be 20%.

c. Allocation of money for the development of a program that potentially establishes a pension, or similar, plan for former employees of the Nation who are Tribal Member Elders. Up to four (4%) of the revenue generated by this *Tax Code* (5 HCC §10) shall be allocated to a special revenue account dedicated to develop a pension plan, or similar plan, for Ho-Chunk Nation Tribal Member Elders who have been employees of the Nation. The Legislature shall make a determination annually, when reviewing and approving annual fiscal year budgets, concerning the funding amount and percentage of revenues that shall be directed into said special revenue account within the Nation's Treasury Department. Initially, no revenues shall be set aside until after the following occurs: after the first full fiscal year in which the *Tax Code* is enacted, the Ho-Chunk Nation Department of Treasury, after consultation with the Nation's Department of Justice, Personnel Department, and Office of Legislative Counsel, shall provide the Legislature with guidelines and a recommendation for the parameters, feasibility and legal requirements for said pension plan, or similar program; upon these recommendations, the Legislature shall consider the creation of the program and any necessary funding.

d. Allocation of money to prevent tobacco addiction. Up to five percent (5%) of the revenue generated by this *Tax Code* (5 HCC §10) shall be allocated to a special revenue account dedicated to prevent Ho-Chunk Nation Members, particularly youth, from using or becoming addicted to tobacco products. The Legislature shall make a determination annually, when reviewing and approving annual fiscal year budgets, concerning the funding amount and percentage of revenues that shall be directed into said special revenue account within the Nation's Treasury Department. Initially, no revenues shall be set aside until the Legislature adopts such a program to prevent tobacco addiction.

e. Allocation of money for capital projects and land acquisitions. Up to ten percent (10%) of the revenue generated by this *Tax Code* (5 HCC §10) shall be allocated to a special revenue account to fund capital projects and land acquisitions on behalf of the Nation. The Legislature shall designate capital projects that are to be budgeted on a project basis. The Legislature shall make a determination annually, when reviewing and approving annual fiscal year budgets, concerning the funding amount and percentage of revenues that shall be directed into said special revenue account within the Nation's Treasury Department. The initial percentage, within the first fiscal year, shall be 10%. Revenues allocated for capital projects shall be controlled by the requirements of the Nation's *Finance Manual* (5 HCC §5) with respect to funds designated for a capital project.

f. Allocation of money to develop a program for Ho-Chunk Nation Members with disabilities. Up to ten percent (10%) of the revenue generated by this *Tax Code* (5 HCC §10) shall be allocated to a line-item within the Legislature's annual budget intended to fund programs for, or to assist, Tribal Members who are Disabled or are a Person with a Disability. For purposes of the preceding

sentence, a “Disabled” Person or “Person with a Disability” means any Tribal Member unable to engage in any substantial gainful activities by reason of any medically determinable physical or mental impairment which can be expected to result in death, or has lasted, or can be expected to last for a continuous period of not less than twelve (12) months. The line-item shall fund grants and other types of donations for individual Tribal Members who are disabled or are a Person with a Disability. Determinations regarding what programs to fund, or what assistance to provide shall solely be made by the Legislature. The Legislature shall make a determination annually, when reviewing and approving annual fiscal year budgets, concerning the funding amount and percentage of revenues that shall be directed into the Legislative budget for these purposes. The initial percentage, within the first fiscal year, shall be 10%.

g. Allocation of money to develop a program for a Ho-Chunk Nation Veterans Home Ownership Program. Up to fifteen percent (15%) of the revenue generated by this *Tax Code* (5 HCC §10) shall be allocated to a special revenue account dedicated to the creation, and potential continued funding, for a Ho-Chunk Nation Veterans Home Ownership program. The Legislature shall make a determination annually, when reviewing and approving annual fiscal year budgets, concerning the funding amount and percentage of revenues that shall be directed into said special revenue account within the Nation’s Treasury Department. Initially, 15% of the revenues shall be directed into this special revenue account; however, no funds shall be expended until after the Legislature enacts a program or law establishing said Veterans Home Ownership program.

h. Allocation of money to implement the Criminal Code and Traffic Code. Up to twenty percent (20%) of the revenue generated by this Tax Code (5 HCC § 10) shall be allocated to a special revenue account dedicated to the implementation of the Nation’s Criminal Code and Traffic Code. The Legislature shall make a determination annually, when reviewing and approving annual fiscal year budgets, concerning the funding amount and percentage of revenues that shall be directed into said special revenue account in the Nation’s Treasury Department. The initial percentage upon enactment of this Code, within the first fiscal year, shall be 20%. In the event that allocations are made in accordance with sections c. or d., funds allocated pursuant to this section shall be adjusted accordingly.

i. The Legislature reserves the right to alter the scope or goals of the above-enumerated categories of special tax revenue funding, to refrain from pursuing said programs, or to add funding goals or objectives.

15. Authority to Invoke the Sunset Provision.

The Legislature may suspend the charging of, or the imposition of, a tax under the following circumstances:

a. If at the end of a fiscal year, the Business Department reports, and the Legislature concurs, in a determination that, as a direct result of the imposition of any Tax imposed; pursuant to this Tax Code, there has been a decrease in the sale of that product by twenty percent (20%) compared to the previous year.

CHAPTER II
FUEL TAX

16. Specific Purposes of Fuel Tax.

a. One purpose of the Fuel Tax is to regulate and monitor the sales of fuel at Ho-Chunk Nation enterprises and to support tribal government and tribal public improvement programs that benefit the Members of the Ho-Chunk Nation.

b. Another purpose of the Fuel Tax is also to raise revenues to help fund health, safety, and general welfare programs and services provided to members of the Nation including, but not limited to, those identified in Section 14 above.

17. Application to governmental entities or enterprises of the ho-Chunk Nation. The provisions of this Chapter of the *Tax Code* (5 HCC § 10) shall also apply to the Ho-Chunk Nation including any governmental entity or enterprise of the Ho-Chunk Nation who is a retailer. For purposes of this Chapter of the *Tax Code* (5 HCC § 10), the Ho-Chunk Nation, including any governmental entity or enterprise of the Ho-Chunk Nation, if applicable, shall be included in the definition of a “retailer.”

18. Imposition of Tax. There is hereby levied and collected on a retailer a tax on fuel sold for the privilege of the selling fuel within lands subject to the jurisdiction of the Ho-Chunk Nation.

19. Rate of Tax. The rate of the tax imposed on retailers shall be equal to one cent (\$.01) per gallon of fuel sold.

20. Tax is an Additional Tax. Except if the Nation develops the capability to blend and sell fuel on Trust Land, the tax herein levied and imposed shall be in addition to all other taxes imposed by another jurisdiction.

21. Legal Incidence; Liability for Collection.

a. The legal incidence of the tax imposed by this Chapter of the *Tax Code* (5 HCC § 10) shall be on the retailer.

b. The retailer shall account for and pay all taxes imposed herein based on the amount of fuel sold to consumers within lands subject to the jurisdiction of the Ho-Chunk Nation. The retailer is ultimately responsible for remitting payment to the Ho-Chunk Nation.

22. Collection of Tax. Each Ho-Chunk Nation retailer shall remit to the Ho-Chunk Nation Department of Business the taxes imposed herein for the purchase of fuel by a consumer, whether such payment is by cash or credit.

23. Intergovernmental Agreements.

a. Nothing contained herein shall limit the ability of the Ho-Chunk Nation Legislature to enter into an intergovernmental agreement or compact with the State of Wisconsin or any other state or any other foreign jurisdiction for purposes of collection and remittance of the taxes levied by this Chapter or other taxes with respect to fuel.

b. The tax imposed by this Chapter shall conform to any requirements imposed by an intergovernmental agreement or compact entered into by the Ho-Chunk Nation with the State of Wisconsin or other state or other foreign jurisdiction. Where applicable such agreement or compacts shall supersede Section 16, however, the amount of tax, including any consumer rebates, collected and paid under any agreement or compact to the Tribe shall be an amount equal to or exceeding the amount described in Section 17.

24. Records.

a. All retailers shall maintain and preserve complete and accurate books, records and accounts including, but not limited to:

- (1) Invoices showing the amount of fuel sold by a retailer;
- (2) Invoices showing the amount of tax required by this Chapter to be paid and actually paid by the retailer;
- (3) The amount of fees collected from the consumer;
- (4) Any other information deemed necessary by the Tax Commission; and
- (5) Any other information deemed necessary by the Legislature.

b. Retailers shall maintain the records required by Section 22, subparagraph a. for three (3) years from the date the amount of tax determined to be due becomes final.

**CHAPTER III
TRANSIENT LODGING TAX**

25. Specific Purposes of Transient Lodging Tax.

a. The purpose of the Transient Lodging Tax is to support tourism at Ho-Chunk Nation facilities and to support tribal government and tribal public improvement programs that benefit the members of the Ho-Chunk Nation.

b. A portion of the funds raised by the Transient Lodging Tax shall be used to raise revenues to fund health, safety, and general welfare programs and services provided to members of the Nation including, but not limited to, those identified in Section 14 above.

26. Application to Governmental Entities or Enterprises of the Ho-Chunk Nation. The provisions of this Chapter of the *Tax Code* (5 HCC § 10) shall also apply to the Ho-Chunk Nation including any governmental entity or enterprise of the Ho-Chunk Nation who operates a transient lodging establishment. For purposes of this Chapter of the *Tax Code* (5 HCC § 10), the Ho-Chunk Nation, including any governmental entity or enterprise of the Ho-Chunk Nation, if applicable, shall be included in the definition of a “transient lodging establishment.”

27. Imposition of Tax.

a. There is hereby levied and collected a tax upon the sale of or the charge made for the privilege of the furnishing of transient lodging units by a transient lodging establishment.

~~b. With respect to the transient lodging tax, the Business Department shall:~~

~~(1) Determine whether or not the transient lodging establishment will pass on the full amount or a portion of the tax as an additional fee to the occupant of a transient lodging establishment; and~~

~~(2) Determine the actual amount to be charged as the additional fee to the patron of a transient lodging establishment. The actual amount charged shall be within the range of zero to five dollars (0—\$5.00) per night, per room, per stay at a transient lodging establishment. Within the range provided in the preceding sentence, the actual amount charged shall be determined taking into account the following factors:~~

~~(a) Day of the week for which the transient lodging units will be occupied;~~

~~(b) The average daily rate for the hotel or similar venue, which is the revenue of the hotel or similar venue, divided by the number of lodging units sold;~~

~~(c) Occupancy percentages for the hotel or similar venue;~~

~~(d) Weather conditions for the time of the year; or~~

~~(e) Any other factor the Business Department deems relevant.~~

28. Rate of Tax. The rate of the tax imposed on a transient lodging establishment shall be **ten percent (10%)** ~~five dollars (\$5.00)~~ per night per room per stay occupied at a Transient Lodging Establishment.

29. Tax as an Additional Tax. The tax herein levied and imposed shall be in addition to all other taxes imposed by another jurisdiction.

30. Legal Incidence; Liability for Collection.

a. The legal incidence of the tax imposed by this Chapter of the *Tax Code* (5 HCC § 10) shall be on the transient lodging establishment.

b. The transient lodging establishment shall account for and pay all taxes imposed herein based on the rate of **ten percent (10%)** ~~five dollars (\$5.00)~~ per night per room per stay occupied at a

Transient Lodging Establishment within tribal lands subject to the jurisdiction of the Ho-Chunk Nation. The transient lodging establishment is ultimately responsible for remitting payment to the Ho-Chunk Nation, ~~regardless of whether the Business Department authorizes the retailer to charge the consumer an additional fee.~~

~~31. Collection of Tax. Each Ho-Chunk Nation transient lodging establishment shall remit to the Ho-Chunk Nation Department of Business the taxes imposed herein for the purchase of transient lodging by a consumer, whether such payment is by cash or credit.~~

32. Intergovernmental Agreements.

a. Nothing contained herein shall limit the ability of the Ho-Chunk Nation Legislature to enter into an intergovernmental agreement or compact with any other jurisdiction for purposes of collection and remittance of the taxes levied by this Chapter or other taxes with respect to transient lodging.

~~b. The tax imposed by this Chapter shall conform to any requirements imposed by an intergovernmental agreement or compact entered into by the Ho-Chunk Nation with the State of Wisconsin or other state or other foreign jurisdiction. Where applicable such agreement or compacts shall supersede Section 25, however, the amount of tax, including any consumer rebates, collected and paid under any agreement or compact to the Tribe shall be an amount equal to or exceeding the amount described in Section 26.~~

33. Records.

a. All transient lodging establishments shall maintain and preserve complete and accurate books, records and accounts including, but not limited to:

- (1) Number of rooms occupied at that particular Transient Lodging Establishment;
- (2) Invoices showing the amount of tax required by this Chapter to be paid and actually paid by the transient lodging establishment;
- (3) If charged, invoices showing the amount of **tax** fees charged;
- (4) Any other information deemed necessary by the Business Department; and
- (5) Any other information deemed necessary by the Legislature.

b. Retailers **A Transient Lodging Establishment** shall maintain the records required by Section 31, subparagraph a. for three (3) years from the date the amount of tax determined to be due becomes final.

**CHAPTER IV
MERCHANDISE SALES TAX**

34. Specific Purposes of Merchandise Sales Tax.

a. One purpose of the Merchandise Sales Tax is to regulate and monitor the sales of retail merchandise at Ho-Chunk Nation enterprises and to support tribal government and tribal public improvement programs that benefit the Members of the Ho-Chunk Nation.

b. Another purpose of the Merchandise Sales Tax is also to raise revenues to help fund health, safety, and general welfare programs and services provided to members of the Nation including, but not limited to, those identified in Section 14 above.

35. Application to Governmental Entities or Enterprises of the Ho-Chunk Nation. The provisions of this Chapter of the *Tax Code* (5 HCC § 10) shall also apply to the Ho-Chunk Nation including any governmental entity or enterprise of the Ho-Chunk Nation who operates a transient lodging establishment. For purposes of this Chapter of the *Tax Code* (5 HCC § 10), the Ho-Chunk Nation, including any governmental entity or enterprise of the Ho-Chunk Nation, if applicable, shall be included in the definition of a “retailer”.

36. Imposition of the Tax. For the privilege of conducting sales at retail for a consideration, a tribal Merchandise Sales tax is hereby levied and collected on a retailer for retail merchandise sales within the Nation’s enterprises within lands subject to the jurisdiction of the Ho-Chunk Nation, subject to any exemptions from the definition of Merchandise and not imposed in combination with the other taxes authorized in this Code.

37. Rate of Tax. The rate of the tax imposed on retailers shall be no greater than the sales tax rate on retail merchandise sales established by the State of Wisconsin, but shall be subject to any change authorized by the Legislature.

38. Tax as an Additional Tax. The tax herein levied and imposed shall be in addition to all other taxes imposed by another jurisdiction.

39. Legal Incidence; Liability for Collection.

a. The legal incidence of the tax imposed by this Chapter of the *Tax Code* (5 HCC § 10) shall be on the retailer.

b. The retailer shall account for and pay all taxes imposed herein based on the amount of retail merchandise sold to consumers within lands subject to the jurisdiction of the Ho-Chunk Nation. The retailer is ultimately responsible for remitting payment to the Ho-Chunk Nation.

40. Collection of Tax. Each Ho-Chunk Nation retailer shall remit to the Ho-Chunk Nation Department of Business the taxes imposed herein for the purchase of retail merchandise by a consumer, whether such payment is by cash or credit.

41. Intergovernmental Agreements. Nothing contained herein shall limit the ability of the Ho-Chunk Nation Legislature to enter into an intergovernmental agreement or compact with the State of Wisconsin or any other state or any other foreign jurisdiction for purposes of collection and remittance of the taxes levied by this Chapter or other taxes.

42. Records.

a. All retailers shall maintain and preserve complete and accurate books, records and accounts including, but not limited to:

- (1) Invoices showing the amount of retail merchandise sold by a retailer;
- (2) Invoices showing the amount of tax required by this Chapter to be paid and actually paid by the retailer;
- (3) The amount of fees, if any, collected from the consumer;
- (4) Any other information deemed necessary by the Business Department; and
- (5) Any other information deemed necessary by the Legislature.

b. Retailers shall maintain the records required by Section 42 for three (3) years from the date the amount of tax determined to be due becomes final.

**CHAPTER V
TOBACCO TAX**

43. Specific Purposes of Tobacco Tax.

a. The Ho-Chunk Nation has a significant interest in protecting the health, safety and general welfare of its members, the residents within the land of the Ho-Chunk Nation and those persons and businesses doing business on and/or visiting any of the Ho-Chunk Nation's enterprises. In addition, to the General Purposes of this *Tax Code* (5 HCC § 10) as stated in Section 2, the purpose of the Tobacco Tax Chapter of this *Tax Code* (5 HCC § 10) is to charge an extra fee on the sale of tobacco products in order to discourage the use of tobacco products.

b. A portion of the funds raised by the Tobacco Tax shall fund health, safety and general welfare programs and services provided to members of the Ho-Chunk Nation including, but not limited to, those identified in Section 14 above.

44. Application to Governmental Entities or Enterprises of the Ho-Chunk Nation. The provisions of this Chapter of the *Tax Code* (5 HCC § 10) shall also apply to the Ho-Chunk Nation including any governmental entity or enterprise of the Ho-Chunk Nation who is a retailer. For purposes of this Chapter of the *Tax Code* (5 HCC § 10), the Ho-Chunk Nation, including any

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governmental entity or enterprise of the Ho-Chunk Nation, if applicable, shall be included in the definition of a “retailer.”

45. Imposition of Tax. There is hereby levied and imposed a tax upon the privilege of selling tobacco products within lands subject to the jurisdiction of the Ho-Chunk Nation. Such products are required to have a Ho-Chunk Nation Tribal Tax Stamp affixed to them.

46. Rate of Tax. The tax rates imposed under this Section of the *Tax Code* (5 HCC § 10) shall be established by the Ho-Chunk Nation Legislature and the Legislature determines:

a. There is hereby levied upon the sale of cigarettes and other tobacco products by a retailer for sales within the exterior boundaries of the Ho-Chunk Nation a tax equal to one-dollar (\$1.00) per pack of cigarettes sold exclusive of any rebate.

b. All products taxed pursuant to Section 46, subparagraph a., immediately above, are required to have the Ho-Chunk Nation Tribal Tax Stamp affixed to them.

47. Tax is Additional Tax. The tax herein levied and imposed shall be in addition to all other taxes imposed by another jurisdiction.

48. Legal Incidence; Liability for Collection.

a. The legal incidence of the tax imposed by this Chapter of the *Tax Code* (5 HCC § 10) shall be on the retailer.

b. The retailer shall account for and pay all taxes imposed herein based on the amount of tax stamps and/or taxes corresponding to the sale of cigarettes and other tobacco products sold to consumers within lands subject to the jurisdiction of the Ho-Chunk Nation. The retailer is ultimately responsible for remitting payment to the Ho-Chunk Nation.

49. Collection of Tax. Each retailer shall remit to the Ho-Chunk Nation Department of Business the taxes imposed herein for the purchase of tobacco products by a consumer, whether such payment is by cash or credit.

50. Intergovernmental Agreements.

a. Nothing contained herein shall limit the ability of the Ho-Chunk Nation Legislature to enter into an intergovernmental agreement or compact with the State of Wisconsin or any other state or foreign jurisdiction for purposes of collection and remittance of the taxes levied by this Chapter or other taxes with respect to tobacco products.

b. Except with respect to Native Brand Tobacco Products, the tax imposed by this Chapter shall conform to any requirements imposed by an intergovernmental agreement or compact entered into by the Ho-Chunk Nation with the State of Wisconsin or other state or foreign jurisdiction. Where applicable such agreement or compacts shall supersede Sections 45 and 46, however, the

amount of tax, including any consumer rebates, collected and paid under any agreement or compact to the Tribe shall be an amount equal to or exceeding the amount described in Sections 45 and 46.

51. Wholesale Exceptions. The tax imposed by Section 45 shall not apply to sales by the retailers when they plan to sell the product outside the boundaries of the Ho-Chunk Nation or the jurisdiction of its enterprises.

52. Records.

a. All retailers shall maintain and preserve complete and accurate books, records and accounts including, but not limited to:

- (1) Invoices showing the amount of tobacco products sold by a retailer;
- (2) Invoices showing the amount of tax required by this Chapter to be paid and actually paid by the retailer;
- (3) Any other information deemed necessary by the Tax Commission; and
- (4) Any other information deemed necessary by the Legislature.

b. Retailers shall maintain the records required by this Section for three (3) years from the date the amount of tax determined to be due becomes final.

**CHAPTER VI
ALCOHOL TAX**

53. Specific Purpose of Alcohol Tax.

a. One purpose of the Alcohol Tax is to regulate and monitor the sales of alcohol at Ho-Chunk Nation enterprises and to support tribal government and tribal public improvement programs that benefit the Members of the Ho-Chunk Nation.

b. Another purpose of the Alcohol Tax is also to raise revenues to help fund health, safety, and general welfare programs and services provided to members of the Nation including, but not limited to, those identified in Section 14 above.

54. Application to Governmental Entities or Enterprises of the Ho-Chunk Nation. The provisions of this Chapter of the *Tax Code* (5 HCC § 10) shall also apply to the Ho-Chunk Nation including any governmental entity or enterprise of the Ho-Chunk Nation who is a retailer. For purposes of this Chapter of the *Tax Code* (5 HCC § 10), the Ho-Chunk Nation, including any governmental entity or enterprise of the Ho-Chunk Nation, if applicable, shall be included in the definition of a “retailer.”

~~55. Imposition of Tax.~~ There is hereby levied and collected on a retailer, that begins sales of alcohol after the date of enactment of this Section, a tax on alcohol sold for the privilege of the selling alcohol within lands subject to the jurisdiction of the Ho-Chunk Nation.

56. Rate of Tax. The rate of the tax imposed on retailers shall be equal to twenty-five cents (\$.25) per alcoholic drink sold: and five percent (5%) on each sale of packaged alcohol.

57. Tax is an Additional Tax. The tax herein levied and imposed shall be in addition to all other taxes applicable imposed by the Ho-Chunk Nation and any another jurisdiction.

58. Legal Incidence; Liability for Collection.

a. The legal incidence of the tax imposed by this Chapter of the *Tax Code* (5 HCC § 10) shall be on the retailer.

b. The retailer shall account for and pay all taxes imposed herein based on the amount of alcoholic drinks sold to consumers, and based on the amount of packaged alcohol sold to consumers, within lands subject to the jurisdiction of the Ho-Chunk Nation. The retailer is ultimately responsible for remitting payment to the Ho-Chunk Nation.

~~59. Collection of Tax.~~ Each Ho-Chunk Nation retailer shall remit to the Ho-Chunk Nation Department of Business the taxes imposed herein for the purchase of alcohol by a consumer, whether such payment is by cash or credit.

60. Intergovernmental Agreements.

a. Nothing contained herein shall limit the ability of the Ho-Chunk Nation Legislature to enter into an intergovernmental agreement or compact with the State of Wisconsin or any other state or any other foreign jurisdiction for purposes of collection and remittance of the taxes levied by this Chapter or other taxes with respect to fuel.

~~b. The tax imposed by this Chapter shall conform to any requirements imposed by an intergovernmental agreement or compact entered into by the Ho-Chunk Nation with the State of Wisconsin or other state or other foreign jurisdiction. Where applicable such agreement or compacts shall supersede Section 53, however, the amount of tax, including any consumer rebates, collected and paid under any agreement or compact to the Tribe shall be an amount equal to or exceeding the amount described in Section 54.~~

61. Records.

a. All retailers shall maintain and preserve complete and accurate books, records and accounts including, but not limited to:

- (1) Invoices showing the amount of alcohol sold by a retailer;

- (2) Invoices showing the amount of tax required by this Chapter to be paid and actually paid by the retailer;
- (3) The amount of **tax** fees collected from the consumer;
- (4) Any other information deemed necessary by the **Business Department Tax Commission**; and
- (5) Any other information deemed necessary by the Legislature.

b. Retailers shall maintain the records required by this Section for three (3) years from the date the amount of tax determined to be due becomes final.

Legislative History:

- 02/17/09 Introduced to the full Legislature for referral to the Finance Committee of the Legislature.
- 03/25/09 Presented to the Finance Committee. Finance Committee passes the following motion "Motion . . . to REFER the Proposed Tax Code to the Office of the President for consideration of holding an informal meeting with the Department of Treasury, Department of Business, Department of Justice and the Office of the President the 2nd week of April with the Legislative Attorney/Counsels to review and discuss the proposed code. Once this is completed to hold a Legislative Off-Site the 2nd week of May for review by the Legislature, Legislative Staff and appropriate Executive Branch Staff."
- 04/15/09 Work-group meeting held. Concerns raised that the creation of this tax system was unnecessary given the current structure of the government because if the Nation wanted to raise additional revenue why not simply add additional charges to items sold by the Nation without the necessity of creating the Tax Commission and associated bureaucracy.
- 09/24/09 Development Committee passes the following motion "Motion . . . to refer the Cigarette Tax Issue to an Off-Site and to have Legislative Counsel's Office compile the documents and comments provided by Department of Justice, Department of Business, and Legislative Counsel's Office for the Off-Site."
- 10/26/09 Off-Site meeting held with Legislators, Legislative Staff, and Executive Branch Personnel including representatives from the Department of Business, Department of Justice, and Office of the President.
- 11/02/09 Finance Committee passes four motions with respect to *Tax Code*:
Motion that the Legislative Counsel's Office shall consult with Lance Morgan of the Nebraska Winnebago Tribe with respect to the Tax Code to gain insight regarding what has worked with the Nebraska Winnebago Tribe's Tax Code.
- Motion to have the Office of the President have the Business Department conduct an analysis of what revenue government entities within Wisconsin raise through their

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respective hotel, tobacco, and fuel taxes and provide this analysis to the Legislature and Legislative Counsel's Office within two weeks.

Motion to have the Office of the President have the Business Department provide the Legislature with an analysis of the amount of money that could be generated through a tobacco, hotel, and fuel tax with charging various amounts of tax for each product.

Motion to authorize the Legislative Counsel's Office to negotiate tobacco sales agreement for the Nation's DeJope property with the Wisconsin Department of Administration and upon completion of the negotiation to bring back to the Legislature for its consideration.

- 02/09/10 Legislature passes Resolution 02 – 09 – 10 – L placing proposed *Tax Code* out for forty-five day public comment and requiring representatives from the Legislative Counsel's Office and Department of Business to make presentations to all Area Meetings within the months of February and March. Forty-five day public comment period will end as of March 29, 2010.
- 04/08/10 Legislature holds off-site meeting to review comments receiving during forty-five day public comment period.
- 04/20/10 Redline and clean version of *Tax Code* presented to Legislature after incorporating changes recommended after placing *Tax Code* out for forty-five day public comment, making presentations to all District Meetings, placing *Tax Code* on forty-five day review section of Nation's website, and placing a notice regarding the proposed *Tax Code* in the *Hocak Worak*. Presented with Resolution to hold a public hearing pursuant to motion adopted at La Crosse District Meeting and also place out for public comment again. *Resolution 4-20-10 O* adopted to schedule a public hearing for June 19, 2010 and to also place on the Nation's website for public review, and place out for public comment until June 21, 2010.
- 06/19/10 Legislature holds Public Hearing at Ho-Chunk Casino Hotel and Convention Center. Presentation made to public regarding the proposed *Tax Code* and opportunity for questions and comments was provided.
- 07/06/10 Legislature adopts Resolution 7-6-10C, placing the proposed *Tax Code* out for forty-five day public comment.
- 08/12/10 Proposed *Tax Code* discussed and summarized by Legislative Counsel at District 2 Area Meeting.
- 12/07/10 Legislature adopts motion to consult with Executive Branch regarding implementation of the proposed *Tax Code*.
- 02/03/11 Staff and Legislators working on proposed *Tax Code* meet to get Code back on agenda and discuss issues identified and comments submitted.
- 02/16/11 *Tax Code* Pre-Enactment meeting by Staff and Legislators working on proposed *Tax Code* to review issues raised by Executive Branch and public comments.

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- 03/22/11 Legislature adopts motion to refer proposed *Tax Code* to Legislative Development Committee for discussion.
- 04/21/11 Legislative Development Committee adopts motion to have Legislative Counsel and the Financial Examiner work on final edits to the Draft Tax Code, and have a final version ready for adoption at the next Legislative Session.
- 05/03/11 Legislature adopts Tax Code (5 HCC §10) via *Resolution 5-03-11C*, effective thirty days after date of adoption.
- 02/05/15 Legislature places Tax Code out for 45 Day Public Comment via Resolution 02.05.15N.
- 05/19/15 Legislature adopts amendments to the Tax Code (5 HCC § 10) via Resolution 05.16.15L.
- 07/19/16 Legislature adopts Resolution 07-19-16L amending the Tax Code (5 HCC § 10) to enact an Alcohol Tax via Quick Passage.
- 09/18/18 Legislature authorizes placing Tax Code out for public review and comment, including draft proposed amendments to the Code.