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## **GENERAL REVENUE AND TAXATION**

### **Section 1. Citation**

This Title may be cited as the General Revenue and Taxation Act of 1990.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 2. Purpose**

It being necessary to strengthen the Tribal Government by licensing and regulating certain conduct within the Tribal jurisdiction, to provide financing for expansion of Tribal Government, and to provide financing for expansion of Tribal Government operations and services in order for the Kickapoo Nation to efficiently and effectively exercise its confirmed governmental responsibilities within the Indian Country subject to the jurisdiction of the Kickapoo Nation, the purpose of this Title is to provide for the licensing and regulation of certain conduct, and the levy and collection of certain revenue and taxes.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**CHAPTER ONE****KICKAPOO TAX COMMISSION****Section 101. Tax Commission Created**

There is hereby created, ordained, and chartered with respect to the Kickapoo Nation, a public body politic to be known as the “KICKAPOO TAX COMMISSION” which shall be an agency of the Kickapoo Nation subordinate to the Business Committee, possessing all powers, duties, rights, and functions hereinafter defined, and as are now or as may hereafter be conferred upon it by law.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**Section 102. Composition of Tax Commission**

The members of the Kickapoo Tax Commission shall consist of the Second Chief who shall serve as the Chairman of the Commission, the Secretary-Treasurer, the General Manager, the Director of the Tribal Accounting Department, and one (1) additional member who shall be appointed by, and served at the pleasure of the Business Committee. Neither an appointment nor a removal of the at large member of the Tax Commission shall be of any force or effect until a written resolution reflecting such appointment or removal has been filed for record in the official Tribal records maintained by the Secretary-Treasurer’s office.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**Section 103. Seal**

The Kickapoo Tax Commission is authorized, directed to acquire and use a seal which shall be circular in form, with the words “TAX COMMISSION-KICKAPOO NATION” around the edge thereof, and the word “sea;” in its center. The seal shall be impressed upon the originals or certified copies of all licenses, orders, rules, and other official documents of the Commission as evidence of their authenticity and authority.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**Section 104 – 110. Reserved****Section 111. General Powers of the Tax Commission**

The Tax Commission shall generally be charged with the administration and enforcement of all Tribal tax laws. Incidental to the administration or enforcement of the Tribal tax laws. The Tax Commission shall have the power to:

(a) Assess, collect, and issue receipts for such taxes as are imposed by ordinance of the Business Committee and to bring actions on behalf of the Tribe in Tribal Court for the collection of Tribal taxes, penalties, and interest, and the enforcement of the Tribal tax laws, all such actions shall be styled: The Kickapoo Nation ex al. Tax Commission vs. \_\_\_\_\_;

(b) Administer oaths, conduct hearings, and, by subpoena, to compel the attendance of witnesses and the production of any books, records, and papers of any taxpayer relating to the enforcement of the Tribal tax laws;

(c) Make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer, upon reasonable notice, during normal business hours, at any other time agreed to by said taxpayer, or at any time pursuant to a search warrant signed by the Tribal Court;

(d) Examine, under oath, either orally or in writing any taxpayer or any agent, officer, or employee of any taxpayer, or any other witness in respect to any matter relative to the Tribal tax laws;

(e) Exercise all other authority delegated or conferred upon it by law, or as may be reasonably necessary in the administration or enforcement of any Tribal tax laws.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Section 112. Rulemaking Authority**

(a) The Tax Commission shall have the authority to prescribe, promulgate, and enforce written rules and regulations not inconsistent with this Title to provide for its internal operational procedures, or to interpret or apply any Tribal tax laws as may be necessary to ascertain or compute the tax owing by any taxpayer, or for the filing of any reports or returns required by any Tribal tax laws, or as shall be reasonably necessary for the efficient performance of its duties, or as may be required or permitted by law.

(b) The Tax Commission shall have the authority by rule to adopt and promulgate a schedule of fees and charges for services rendered relating to transcripts and certificates of records; for transcripts for appeal and other services involving the furnishing of copies of proceedings, files, and records; and, in the case of transcripts of records for appeal, the Commission may prescribe a reasonable charge therefor to be paid by the party demanding the record, which said fees and charges shall be credited to the miscellaneous receipts of the Commission.

(c) No rule or regulation of the Tax Commission shall be of any force or effect until and unless a certified copy of said rule or regulation bearing the signatures of

at least two members of the Tax Commission shall have been filed for record in the office of the Secretary-Treasurer and the office of the Clerk of the Tribal Court.

(d) The Tribal Court shall take judicial notice of all rules of the Tax Commission promulgated pursuant to this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 113. Forms**

The Tax Commission may prepare and make available to the public such standard forms as are or may be necessary to carry out its functions and which are not otherwise provided for by this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 114. Tax Stamps and Licenses**

(a) The Tax Commission shall provide for the form, size, color, and identifying characteristics of all licenses, permits, tax stamps, tags, receipts, or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Tax Commission or otherwise showing compliance with the tax laws of the Kickapoo Nation.

(b) Such stamps or licenses shall contain at least the following information:

- (1) The words; "Kickapoo Nation".
- (2) The words, "Tax Commission".
- (3) The monetary amount for which the tax or license was issued.
- (4) Wording which indicates the type of tax imposed.

(5) If the instrument is a license, permit, or receipt, wording, indicating the type of license, permit, or receipt, its effective dates, and the name and address of the taxpayer to whom issued.

(c) The Tax Commission shall provide for the manufacture, delivery, storage, and safeguarding of such stamps, licenses, permits, tags, receipts, or other documents and shall safeguard such instruments against theft and counterfeiting.

(d) When the Tax Commission deems it necessary to do so, it may allow the use of metering devices in lieu of paper stamps under such rules and regulations as it shall prescribe.

(e) The Tax Commission may exchange new stamps for damaged, out of date, or other unusable stamps under such rules and regulations as the Tax Commission shall prescribe.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 115. Records**

(a) The Tax Commission shall keep and maintain accurate, complete, and detailed records which reflect all taxes, penalties, and interest levied, due, and paid, all licenses issued, and each and every official transaction, communication, or action of the Commission.

(b) Such records shall be maintained at the Tribal building and shall not be removed from said building absent the consent of the Business Committee by resolution.

(c) Such records shall be subject to audit at any time upon the direction of the Business Committee or the General Council, and shall be audited not less than once each year by the Tax Commission.

(d) Any record of the Tax Commission, (except the record of an official decision or opinion rendered upon an administrative appeal), which relates to the individual business or personal activities of a named particular taxpayer or taxpayers shall not be open to public inspection and shall be released only to the taxpayer involved, Tribal officials who have a legitimate official need for such records, or upon the order of the Tribal Court for good cause shown.

(e) Any record of the Tax Commission which does not relate to the individual business or personal activities of a named particular taxpayer or taxpayers, and all decisions or opinions rendered upon an administrative appeal, shall be public records of the Tribe and shall be available for public inspection during regular business hours. Copies of such records may be obtained by payment of such copying cost as may be established by rule of the Commission, provided, that names and other identification of any taxpayer appearing in such record shall be rendered unreadable prior to issuance of such copy unless the provisions of subsection (d) above would allow release of such information.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)



## **Section 116. Bookkeeping**

There shall be established and kept such financial record books as may be necessary under generally applicable accounting standards to adequately account for all funds and monies received by the Commission on behalf of the Tribe. Separate books shall be maintained for each type of tax imposed by this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Section 117. Treasury Account – Deposits**

(a) There is hereby authorized and directed to be established an account in some federally insured financial banking institution or the Bureau of Indian Affairs to be known as the Kickapoo Treasury Account.

(b) The treasury account shall be an interest bearing account and the funds therein may be invested and reinvested as may be approved by the Business Committee.

(c) No monies shall be released or expended from this account except upon written resolution of the Business Committee appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Tribe. Expenditures from this account shall be made only by direct transfer to the account of the receiving department, agency, or program named in such appropriation resolution.

(d) All tax monies, license fees, penalties, interest, service fees or changes or other monies collected by the Tax Commission in the administration and enforcement of this Title, except as otherwise specifically authorized by law, shall be deposited in the treasury account.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Section 118-120. Reserved**

## **Section 121. Tax Commission Employees and Expenses**

(a) The Tax Commission may employ such employees and incur such expenses as may be necessary for the proper discharge of its duties subject to the limitations and restrictions herein set out.

(b) The Tax Commission shall, to the maximum extent feasible, utilize regular Tribal staff in exercising the duties and responsibilities in this Title set out, and may delegate to the Tribal staff by rule such of its functions as may be necessary to efficiently administer this Title, provided, that the Commission's rule-making authority may not be delegated.

(c) The Tribal manager is authorized and directed to cause such regular staff assistance as is feasible to be given to the Tax Commission.

(d) The total amount dispersed by the Tax Commission in any one (1) fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated therefor by the Business Committee and the General Council. The Tax Commission shall submit to the Business Committee a line item proposed budget for the next fiscal year not later than the 15<sup>th</sup> day of June in each year.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Section 122. Bonds**

(a) The Tax Commission may require each of its employees who shall be required to handle public monies, revenue, or tax stamps, or who shall be responsible therefor, to give bonds for the honest and faithful performance of their duties, in such amounts as may be fixed by the Commission.

(b) The premiums on any bonds required by this section of the Tax Commission members and its employees shall be paid from funds authorized in the Tax Commission budget.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Section 123. Nepotism**

(a) It shall be unlawful for the Tax Commission to employ, appoint, or elect any person related to any member of the Tax Commission, by blood or marriage within the third degree, to any office or position of profit within the Tax Commission, or to any person of profit with the Tax Commission, or to any position as an outside or independent contractor. This provision shall not prohibit any officer, appointee, or employee already in the service of the Commission from continuing and being promoted therein after the appointment or election of a relative to membership on the Tax Commission as provided by law.

(b) Each member of the Tax Commission who approves, votes for, or authorizes any employment, appointment, or election in violation of this Section and the person employed, appointed, or elected in violation of this section shall be jointly and severally liable to the Kickapoo Nation for any and all salaries, wages, commissions, bonuses, fees, expenses, reimbursements, or other thing of value received by virtue of the unlawful appointment of the person so employed, appointed or elected.

(c) If it is in the best interests of the Tribe, the Business Committee may, by written resolution explaining the reasons therefor, provided a waiver of this section in individual cases at the request of the Commission.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Sections 124-130. Reserved**

### **Section 131. Collection of Taxes**

The Tax Commission is hereby authorized to bring any necessary action in any appropriate Court for the collection of any taxes, penalties or interest assessed and unpaid. Such action shall be civil in nature and all penalties and interest shall be in the form of civil damages for non-payment. Any civil remedies, including but not limited to garnishment, attachment, and execution, shall be available for the collection of any monies due the Tribe. The Tax Commission may request the Tribal Attorney to bring any necessary action for the collection of any taxes, penalties, or interest assessed and unpaid with the approval of the Business Committee. In all other cases, the Tax Commission shall be represented in the Tribal Court by the Attorney General.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 132. Other Remedies**

(a) In addition to the remedies available for the collection of monies, the Tax Commission is authorized to bring an action in any appropriate Court to enjoin the beginning or operation of any unlicensed business, activity, or function when Tribal law requires a license be issued for such business, activity, or function.

(b) In addition to the remedies available for the collection of monies, the Tax Commission, by and through the members and staff assigned thereto, is authorized, when accompanied by a police officer, to seize any property which is declared contraband by any section of this Title, or upon which any tax levied is in excess of 60 days past due under the same condition, limitations and exceptions as evidence of crimes may be searched for and seized, provided, that within ten (10) days of such seizure, the Tax Commission shall cause to be filed an action against said property alleging the nonpayment of tax or other lawful reason for such seizure and forfeiture, and upon proof, the court shall order such property forfeited for nonpayment of taxes and title thereto vested in the Kickapoo Nation, provided further, that any person claiming ownership, the right to possession other interest in said property may intervene in said action and raise any defenses which he may have, and such persons shall be served with process if they are known prior to the beginning of the action, provided further, that such persons may redeem said property at any time prior to the entry of a final judgment of forfeiture by depositing all taxes, penalties, and interest assessed or owing with the Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 133. Inventory of Seized Property**

Whenever any authorized person shall seize any property pursuant to Section 132 of this Title he shall inventory and appraise such property and leave a copy thereof with the person from whom it was seized, or, if such person cannot be found, at the place from which said property was seized, and deliver a copy of said inventory to the Tax Commission and the Tribal Attorney General.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 134. Public Sale of Forfeited Property**

(a) Upon a final order of forfeiture entered by the Tribal Court, the Tax Commission shall circulate an inventory of said property to all divisions of the Tribal government. Any agency of the Tribal government may submit a request to the Business Committee that such portion of said property as they can use be retained for the benefit of the Tribe. The Business Committee shall determine which property will be retained and shall order the Tax Commission to conduct a public sale of the remainder, or to destroy any property which is illegal to possess in all circumstances.

(b) The property to be sold shall be sold at public auction at the Administrative headquarters of the Kickapoo Nation. Not less than (20) days notice of such sale shall be posted in the Tribal Administrative headquarters building and published at least twice in a newspaper of general circulation in the Horton, Kansas area not less than ten (10) days prior to said sale. All funds received at said sale after payment of the cost of said sale shall be deposited in the Treasury Account.

(c) The Tax Commission may conduct such sales at such times as it deems sufficient property has accumulated to make such sale profitable and shall conduct such sales upon direction of the Business Committee.

(d) The seizure, forfeiture, and sale of contraband property shall not reduce or eliminate the tax liability of any person from whom such property was seized. The seizure, forfeiture, and sale of any other property shall reduce the tax liability of the person from whom such property was seized, provided, that such person shall not receive any credit for any excess monies derived from such sale.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 135. Exempt Property**

The following property shall be exempt from garnishment, attachment, execution and sale for the payment of taxes, penalties, and interest due the Kickapoo Nation:

(a) Three-fourths (3/4) of the net wages earned per week by the person or any amount equivalent to a forty (40) hour week at the federal minimum hourly wage, whichever is greater.

(b) One automobile of fair market value equity not exceeding One Thousand Dollars (\$1,000.00).

(c) Tools, equipment, utensils, or books necessary to the conduct of the person's business but not including stock or inventory.

(d) Actual trust or restricted title to any lands held in trust by the United States or subject to restrictions against alienation imposed by the United States but not including leasehold and other possessory interests in such property.

(e) Any dwelling used as the actual residence of the taxpayer including up to five acres of land upon which such dwelling is located whether such dwelling is owned or leased by the taxpayer.

(f) Household goods, furniture, wearing apparel, personal effects but not including televisions, radios, phonographs, tape recorders, more than two (2) firearms, works of art, and other recreational or luxury items.

(g) One horse, one bridle, and one saddle.

(h) All implements of husbandry used upon the homestead.

(i) All ceremonial or religious items.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 151. Administrative Appeals**

Any taxpayer against whom the Tax Commission has assessed taxes, penalties, or interest pursuant to a taxation ordinance of the Kickapoo Nation, or who has paid under written protest any taxes, penalties, or interest assessed by the Tax Commission who believes those taxes, penalties, or interest to be wrongfully assessed or collected, may appeal in writing for a full hearing before the Tax Commission under such rules and regulations as the Tax Commission may prescribe.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 152. Limitations on Administrative Appeals**

Any administrative appeal as provided for in Section 151 of this Title must be begun by filing a written request for a hearing with the Tax Commission within ninety (90) days of the assessment or payment of the taxes, penalties, or interests in controversy,

provided that failure to file an administrative appeal shall not prevent the taxpayer from defending any collection action by the Tax Commission in the Tribal Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**Section 153. Exhaustion of Administrative Remedies**

- (a) Upon a final decision of an appeal pursuant to Section 151 of this Title.
- (b) If the Tax Commission shall fail to schedule and hold a hearing in the merits of the administrative appeal within ninety (90) days after receipt of a written request for a hearing unless a delay is requested or approved by the taxpayer.
- (c) If the Tax Commission shall fail to issue a written decision on said appeal within thirty (30) days of the hearing on the merits of the taxpayer's administrative appeal.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**Section 154. Suits Against the Tax Commission**

The Tax Commission, as a governmental agency of the Kickapoo Nation, its Commissioners, and employees shall be immune from any suit in law or equity while performing their lawful duties within the scope of the authority delegated to them, provided that any taxpayer or other person against whom the Tax Commission has assessed taxes, penalties, or interest or who has paid under written protest any taxes, penalties, or interest may bring an action in the Tribal Court after exhaustion of administrative remedies, to enjoin the Tax Commission from collecting any taxes, penalties, or interest paid under written protest which the Court finally determines to have been wrongfully assessed or collected.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**Section 155. Limitations on Suits Against the Tax Commission**

- (a) Any suit against the Tax Commission authorized by Section 154 must be commenced by filing a petition in the Tribal Court within (30) days after the date of exhaustion of their administrative remedies.
- (b) In no event shall the Court be authorized to award the order of the payment of damages or to fashion any remedy except to enjoin the collection or order the return of the amount of the taxes, penalties, or interest in controversy unless an additional remedy is specifically provided by this Title.

(c) All amounts found to be wrongfully collected and refundable shall earn simple interest at five percent (5%) per annum until refunded.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**Section 156. Refunds to Taxpayers**

(a) Whenever any taxpayer shall establish in administrative or Court proceedings that they are entitled to a refund of any taxes, penalties, or interest previously paid, the Tax Commission shall immediately cause a certified copy of the order and transcript of any administrative action, or judgment of the Court to be filed with the Business Committee.

(b) Upon receipt of such order and transcript, or judgment of the Tribal Court, the Business Committee shall appropriate to the account of the Tax Commission such amounts, as may be necessary to pay such refund, from otherwise unappropriated money in the treasury account. The Tax Commission shall thereafter issue a refund to the taxpayer.

(c) When it appears reasonably certain that the taxpayer to whom a refund is due will incur further tax liability within the next twelve months after such refund is due in an amount in excess of such refund, the Tax Commission, in lieu of subsections (a) and (b) of this section, may credit the amount of such refund, with lawful interest, against the future liability of the taxpayer, provided that any amounts not used within twelve months shall be refunded at the request of the taxpayer.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**Section 157-190. Reserved**

**Section 191. Forgery of Stamps, Etcetera.**

Any person who, without authorization of the Tax Commission, falsely, or fraudulently forges, embezzles, steals, knowingly converts, knowingly misapplies or permits to be misapplied or counterfeits and stamps, tags, licenses, or other instrument evidencing payment of taxes prescribed for use in this Title or who shall use, pass, tender as true, or otherwise be in possession of any unauthorized, false, altered, forged, counterfeited, or previously used instrument for the purpose of evading the payment of taxes imposed by this Title shall forfeit a civil penalty as provided in Section 193 of this Title. Each such counterfeited, embezzled, stolen, converted, misapplied or forged stamp or other instrument shall constitute a separate violation.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Section 192. Offenses**

Any natural Indian person who violates any provision of this Title for the purpose of evading the payment of taxes imposed by this Title shall be guilty of an offense and shall be punished by imprisonment in the Tribal jail for a term not to exceed six (6) months or a fine not to exceed Five Hundred Dollars (\$500.00) or by both such fine and imprisonment.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Section 193. General Penalties**

Any person who files any false report or return, or who fails to file any report or return, or who otherwise violates any of the provisions of this Title for the purpose of evading the payment of taxes imposed by this Title shall forfeit a civil penalty of not more than Five Hundred Dollars (\$500.00) for each such violation in addition to any other penalties prescribed by law.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Section 194. Referrals for Federal Prosecution**

It shall be the duty of all members of the Tax Commission, any police officer, and the Attorney General, upon receiving reliable information that probable cause may exist to believe that any person has violated Section 191 of this Title, to report the facts and circumstances known to him to the appropriate Federal officials and to request that a Federal investigation be commenced to determine whether 18 U.S.C. Section 1163 has been violated.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Section 195. Banishment**

Any natural person or any corporation, partnership, association, company, firm, joint venture, estate, or trust or other person who violates any provision of this Title for the purpose of evading payment of taxes imposed by this Title, in addition to any civil penalties or the civil penalties of seizure and forfeiture imposed by this Title, may be banished and excluded from carrying on any business within the jurisdiction of the Kickapoo Nation for a period not to exceed five (5) years, by order of the Tribal Court, provided that such banishment as may be imposed may be suspended by the Judge of the Tribal Court conditioned upon strict compliance with all ordinances and laws of the Kickapoo Nation. An order of banishment not suspended, shall by operation of law cancel all permits, licenses, and other authority of the person to carry on any business within the Tribal jurisdiction during its terms.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)



### **Section 196. Cancellation of Leases Upon Banishment**

Whenever any person or business is banished and excluded from the jurisdiction of the Kickapoo Nation and the order of banishment is not suspended, and such person or business holds a lease to realty within the jurisdiction of the Kickapoo Nation for other than residential purposes, said lease may be canceled by the Lessor within sixty (60) days of the order of banishment at his option by sending written notice to Lessee or his attorney by registered or certified mail, return receipt requested, at the his last known address. A true and correct copy of the notice of lease cancellation shall be delivered by certified mail, return receipt requested, to the Superintendent of the Kickapoo Indian Agency, the Business Committee, and the Tax Commission at the same time the notice is sent to the Lessee. Such cancellation shall entitle Lessor to full use and possession of the premises and render the lease absolutely void from that date forward and shall relieve Lessor and lessee from all future obligations under such lease, **provided** that such cancellation shall not relieve Lessor or Lessee from any obligation incurred prior to the date of cancellation.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 197. Interest**

All taxes, fees, or other charges, of the Kickapoo Nation not paid when due shall bear interest at the rate of twenty percent (20%) per annum from the date said taxes or fees become due until the date paid.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 198. Commencement of Actions**

Filing a written request for refund with the Tax Commission shall commence an action for a refund within the meaning of the Civil Statute of Limitations if such request be diligently prosecuted according to law.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 199. Taxes Erroneously paid to be Refunded**

Taxes erroneously paid due to a mistake of fact or law may be refunded upon application even though no written protest was made at the time of payment. The taxpayer shall file an application for refund with the Tax Commission and may appeal the determination of the Commission to the Tribal Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**CHAPTER TWO****TOBACCO TAX****Section 201. Definitions**

(a) The term “cigarette” is defined to mean and include all rolled tobacco or any substitute therefore, wrapped in paper or any substitute therefore and weighing not to exceed three (3) pounds per thousand (1000) cigarettes.

(b) The term “person” is defined to mean and include any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity of other identifiable entity to which this Title can be applied.

(c) The term “wholesaler” is defined to mean and include any jobber or person organized and existing or doing business primarily to sell cigarettes or tobacco products to and render services to retailers and who renders such services to retailers within the jurisdiction of the Kickapoo Tribe of Indians of Kansas; that at least 75% of the whole gross sales within the jurisdiction of the Tribe are made at wholesale. Irrespective of the foregoing requirements, any jobber of a person who is recognized and licensed as a wholesaler in the jurisdiction wherein said jobber or person resides, is incorporated, or has its principle place of business shall be wholesaler as defined by this Title, and any operator of four (4) or more cigarette vending machines shall be a wholesaler as defined by this Title.

(d) The term “retailer” is defined to mean and include any person who comes into possession of cigarettes or tobacco products for the purpose of selling or who sells them at retail, any person not coming within the definition of a wholesaler having possession of more than one thousand (1000) cigarettes, and any person operating one, two, or three vending machines.

(e) The term “consumer” is defined to mean and include any person who receives or comes into possession of cigarettes or tobacco products for the purpose of consuming or otherwise disposing of then in any way except by an exchange for value.

(f) The term “Tax Commission” is defined to mean and include the Tax Commission of the Kickapoo Tribe of Indians of Kansas.

(g) The term “sale” or “sales” is defined to mean and include all sales, barter, exchanges or other transfers of ownership of cigarettes or tobacco products from one person to another, or the use or consumption within the tribal jurisdiction in the first instance of cigarettes or tobacco products from outside the tribal jurisdiction upon which the tribal tax has not been paid.

(h) The term “stamp” is defined to mean and include the stamp or stamps produced by the Tax Commission by which the tax levied hereunder is paid.

(i) The term “tobacco product” is defined to mean and include any smokeable product of any species of the tobacco plant, including smoking tobacco suitable for smoking irrespective of size or shape or adulteration which has a wrapper made chiefly of tobacco and includes but is not limited to those items commonly known as cigars, cheroots, or stogies, and any articles or products made from tobacco or may substitute therefore except cigarettes, but not including chewing tobacco of any description including snuff.

(j) The term “vending machine” is defined to mean and include any coin operated machine by means of which cigarettes, or tobacco products, are sold or dispensed.

(k) The term “use” is defined to mean and include the exercise of any right or power over cigarettes or tobacco products incident to the ownership thereof except sales of cigarettes or tobacco products in the regular course of business.

(l) The term “within the Tribal jurisdiction” shall mean all geographical areas within the territorial jurisdiction for the Kickapoo Tribe of Indians of Kansas as defined by 18 U.S.C. 1151.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Section 202. Tax on Cigarettes**

There is hereby levied upon the sale, use, gift, possession or consumption of cigarettes within the tribal jurisdiction a tax of ten cents (\$.10) for each package of cigarettes containing twenty (20) cigarettes or less. On any individual package containing more than twenty (20) cigarettes there is hereby levied a tax of ten cents (\$.10) plus and additional ten cents (\$.10) for each additional twenty (20) cigarettes or fraction thereof.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

## **Section 203. Tax on Tobacco Products**

There is hereby levied upon the sale, use, gift, possession, or consumption of tobacco products within the tribal jurisdiction a tax of ten percent (10%) of the factory list price exclusive of any trade discount, special discounts, or deals.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

#### **Section 204. Tax in Lieu of Other Taxes**

The taxes levied by Sections 202 and 203 of this Title on cigarettes and tobacco products respectively shall be in lieu of all other forms of tax including sales and other general taxes imposed by law.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

#### **Section 205. Tax Paid Once**

Such taxes pursuant to Section 202 and 203 shall be paid only once on any cigarettes sold, used, received, or possessed within the Tribal jurisdiction.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

#### **Section 206. Evidence of Tax**

Payment of the tobacco tax shall be evidenced by stamps applied to each taxable package containing tobacco which shall be furnished by and purchased from the Tax Commission or by an impression of such stamp by use of a metering device approved by the Tax Commission.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

#### **Section 207. Impact of Tax**

The impact of the taxes imposed by this chapter is declared to be on the consumer, user, or possessor and when such tax is paid by any other person that payment shall be considered an advance payment and shall be added to the price to be recovered from the ultimate user, possessor, or consumer. Every wholesaler who has paid such taxes shall, and every retailer who has paid such taxes may show the amount of such taxes as separate item on any invoices which they may issue.

#### **Section 208. Payment of Tax**

(a) Every wholesaler who shall operate within the tribal jurisdiction a warehouse, supply house, storage house, truck or other point from which distribution of cigarettes, or tobacco products to retailers or vending machines will be made shall upon withdrawal from storage, and prior to placing in a vending machine or making any sale, distribution, or tobacco products, cause the same to have affixed thereto such stamp or stamps as are required by this Title.

(b) Every retailer who comes into possession or ownership of any cigarettes, or tobacco products from any source which does not have affixed thereto the proper stamp or stamps shall within seventy-two (72) hours of receipt thereof excluding Sundays

and legal holidays and prior to making any sale or distribution for consumption, cause the same to have affixed thereto such stamp or stamps as are required by this Title.

(c) Every consumer who shall come into possession or ownership of cigarettes, or tobacco products from any source which does not have affixed, thereto the proper stamp or stamps shall within seventy-two (72) hours and prior to the consumption, gift, or other use thereof cause the same to have affixed thereto such stamp or stamps as are required by this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 209. Exclusions From Taxation**

(a) Notwithstanding the provisions of paragraph (c) of Section 208 of this Title or any other provision of law, any natural person who shall come into possession or ownership of cigarettes or tobacco products outside the territorial jurisdiction of the Tribe for personal use and consumption only and upon which is affixed evidence showing that any taxes imposed by the jurisdiction from which said cigarettes or tobacco products were acquired to have been paid shall have exempted from payment of taxes pursuant to this Title the following amounts of each of the following in possession and/or ownership[ at any one time:

- (1) Cigarettes – one thousand (1000) individual cigarettes
- (2) Cigars – five hundred (500) individual cigars
- (3) Other tobacco products – no more than two (2) pounds total

(b) Notwithstanding the provisions of Paragraph 9c) of Section 208 of this Title or any other provision of law, possession, gift or use of non-commercial privately produced tobacco for religious or ceremonial use shall be exempt from taxation. Provided, that if such tobacco is sold, such sale shall be prima facie evidence that the tobacco is not intended for religious or ceremonial use.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 210. Unstamped Tobacco Contraband**

(a) Any unstamped cigarettes or tobacco products found in the custody or control of any person upon which a tax stamp is required to have been placed by this Title and any vehicles or tangible personal property including vending machines used in their transportation, storage, consumption, or concealment are hereby declared to be contraband and subject to seizure, forfeiture and sale.

(b) The forfeiture provisions of this section with regard to vehicles and other personal property shall apply only to persons in possession of cigarettes or tobacco

products with the intent to sell, barter, give away, or exchange the same for value, **provided** that possession of more than one thousand (1000) cigarettes or five hundred (500) cigars, or two (2) pounds of tobacco products shall create a rebuttable presumption and be prima facie evidence that such cigars, cigarettes, or tobacco products are possessed with the intent to sell, barter, give away, or exchange the same for value.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

#### **Section 211. Records**

The Tax Commission shall promulgate rules requiring that all wholesalers and retailers of tobacco within the tribal jurisdiction shall maintain for not less than three years complete and adequate records, including invoices, of all tobacco received and sold or otherwise disposed of, and tax stamps purchased. The Tax Commission may inspect said records at any time to determine whether sufficient stamps have been purchased to account for all tobacco received and sold or otherwise disposed of by said wholesaler or retailer.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

#### **Section 212. Reports**

Every wholesaler or retailer of tobacco shall submit quarterly reports to the Tax Commission on forms prescribed and furnished by the Tax Commission disclosing the opening and closing inventories of unstamped tobacco; stamped tobacco; tobacco stamps; purchases of tobacco including the invoice number, name and address of seller, date and amount of each type of tobacco purchased and such other information pertinent to their business done within the tribal jurisdiction as the Tax Commission shall require; and sales of tobacco; including, if sold for resale, invoice number, name and address of buyer, date and amount of each type of tobacco sold and such other information pertinent to their business done within the tribal jurisdiction as the Tax Commission shall require.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

#### **Section 213. Wholesale and Retail Stocks to be Separate**

Every person who is both a wholesaler and retailer of tobacco shall keep separate records, make separate reports, and keep all stock of tobacco separated and identifiable for the wholesaler and retail portions of his business.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

#### **Section 214-250. Reserved**

### **Section 251. Wholesaler Licensing**

Every wholesaler of tobacco must apply for and receive from the Tax Commission a "Tobacco Wholesaler License" prior to establishing any place of business, warehouse, or wholesale outlet for the sale of tobacco within the tribal jurisdiction. Forms for such application and license shall be provided by the Tax Commission.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 252. Tobacco Wholesaler License**

The Tobacco Wholesaler License shall be valid for one calendar year from the date of issue and shall be nontransferable and nonassignable. A separate license shall be required for each separate location at which wholesaler may establish a place of business, warehouse, or wholesale outlet. The license shall be conspicuously posted in a public area in each such place of business, warehouse, or wholesale outlet. A license fee of twenty dollars (\$20.00) shall be paid for each new or renewal license issued.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 253-260. Reserved**

### **Section 261. Retailer Licensing**

Every retailer of tobacco must apply for and receive from the Tax Commission a "Tobacco Retailer License" prior to establishing any place of business or retail outlet for the sale of tobacco within the tribal jurisdiction. Forms for such application and license shall be provided by the Tax Commission.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 262. Tobacco Retailer License**

The Tobacco Retailer License shall be valid for one calendar year from the date of issue and shall be nontransferable and nonassignable. A separate license shall be required for each separate location at which a retailer may establish a place of business or retail outlet. The license shall be conspicuously posted in a public area in each such place of business or retail outlet. A license fee of twenty dollars (\$20.00) shall be paid for each new or renewal license issued.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 263-270. Reserved**

**Section 271. Vending Machine Permits**

(a) Every wholesaler or retailer of tobacco must apply for and receive from the Tax Commission a "Tobacco Vending Machine Permit" prior to operating any vending machine within the tribal jurisdiction. Forms for such applications and permits shall be provided by the Tax Commission.

(b) The Vending Machine Permit shall be valid for one calendar year from the date of issue and shall be nontransferable and nonassignable. A separate permit shall be required for each separate vending machine. The permit shall be attached to the vending machine in such a manner as to be clearly visible to the public and to persons purchasing tobacco therefrom. A fee of ten dollars (\$10.00) shall be paid for each new or renewal permit issued.

(c) Any operating vending machine from which tobacco may be purchased not having a Tobacco Vending Machine Permit attached thereto is contraband within the tribal jurisdiction and is subject to seizure and sale as is provided by law.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**Sections 272-300. Reserved**



**CHAPTER THREE****SALES TAX****Section 301. Definitions**

(a) The term “person” is defined to mean and include any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity or other identifiable entity to which this Title can be applied.

(b) The term “retailer” is defined to mean and include any person who, in the ordinary course of business, sells any property to another, whether such sale would be described as a “wholesale” or “retail” sale.

(c) The term “consumer” is defined to mean and include any person who receives or comes into possession of property from a retailer by means of a sale of such property.

(d) The term “property” is defined to mean and include all tangible personal property of every kind and description. For the purpose of this Chapter, the term “property” shall not include any natural or artificial gas, electricity, water, or any other utility or public service by telephone and telegraph companies to subscribers or users including transmission or messages, whether local or long distance, or services and rental charges having any connection with the transmission of any messages.

(e) The term “Tax Commission” is defined to mean and include the Kickapoo Tax Commission.

(f) The term “sales”, and their derivatives, is defined to mean and include all sales, barter, trades, exchanges, or other transfer of ownership for value of property from a retailer to any person no matter how characterized.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

**Section 302. Tax on Sales**

There is hereby levied upon the sale of property within the Tribal jurisdiction a tax of two percent (2%) of the actual sales price thereof exclusive of any rebates. If a sale is consummated by trade, barter, or exchange for anything other than money, the tax shall be computed at the fair market value of the property sold.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 303. Impact of Tax**

(a) The impact of the taxes imposed by this chapter is declared to be on the consumer and shall be added to the purchase price of the property sold and recovered from the consumer.

(b) Every retailer shall show the amount of such taxes paid as a separate item on any invoices or receipts which they may issue.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 304. Payment of Tax**

(a) Every retailer shall submit to the Tax Commission within fourteen 914) calendar days after the end of each calendar month a report on such form as the sales and gross amount of sales taxes collected during that calendar month.

(b) Every retailer shall pay the gross sales taxes collected during a calendar month to the Tax Commission at the same time as the report for that calendar month is submitted.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 305. Records**

Every retailer shall maintain for not less than three 93) years complete and adequate records including invoices showing all property received and sold or otherwise disposed of, the price at which sold, and the amount of sales taxes collected and paid.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 306. Penalties**

(a) Every retailer who shall fail to collect the taxes imposed by this Title shall be liable for the full amount of the tax owed plus interest at the statutory rate until paid.

(b) Willful failure to collect or pay over the taxes imposed by this Title shall make the retailer liable for an additional penalty of one hundred percent (100%) of the taxes due plus interest at the statutory rates until paid.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

### **Section 307-400. Reserved**

**CHAPTER FOUR**

**EARNINGS TAX**

**Section 401-499. Reserved**

**CHAPTER FIVE**

**POSSESSORY INTEREST TAXES**

**Section 501-515. Reserved**

**CHAPTER SIX**

**OIL AND GAS SERVICE TAX**

**Section 601-615. Reserved**

TITLE 14

GENERAL REVENUE AND TAXATION

§ 701

**CHAPTER SEVEN**

**BINGO RECEIPTS SURCHARGE TAX**

**Section 701-705. Reserved**

**CHAPTER EIGHT**

**TAXATION AND REGISTRATION OR MOTOR VEHICLES**

**Section 801-811. Reserved**