

CHAPTER 16A
SALES TAX

16A-1 PURPOSE

16A-1.01 The purpose of this chapter is to authorize the collection of taxes for sales on the reservation of the Kootenai Tribe of Idaho. Revenues collected from implementation of this chapter shall be utilized for social programs, education, scholarships, health care, housing for the indigent, employment programs, and other programs consistent with the obligations of the Kootenai Tribal Council to maintain the general welfare of tribal members pursuant to the Constitution of the Kootenai Tribe of Idaho.

16A-2 DEFINITIONS

16A-2.01 "Law" means law as defined under Kootenai Tribal code, ordinances or resolutions, federal laws, or applicable state law.

16A-2.02 "Vendor" means any person, including merchant or retailer, making retail sales, or engaged in the business of making retail sales as defined in this section, to a buyer, whether as an agent, broker, or principal.

16A-2.03 "Sale" means and includes any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration and shall include any transfer of possession through incorporation or any other artifice found by the tax officer to be in lieu of, or equivalent to, a transfer of title, an exchange or barter. "Sale" shall also include:

(1) Producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration of consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

(2) Furnishing, preparing, or serving for consideration food, meals, or drinks and nondepreciable goods and services directly consumed by customers included in the charge thereof.

(3) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(4) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(5) Admission charges.

(6) Receipts from the use of or the privilege of using tribal property or other facilities for recreational purposes.

(7) Providing hotel, motel, tourist home, campground or trailer court accommodations and nondepreciable goods and services directly consumed by customers included in the charge thereof, except where residence is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days.

(8) Receipts from the lease or rental of tangible personal property.

(9) As used in subsections (2) and (7) of this section, goods "directly consumed by customers" shall not be interpreted to mean any linens, bedding, cloth napkins or similar non-disposable property.

16A-2.04 "Sale price" means the total amount for which tangible personal property, including services agreed to be rendered as part of the sale, is sold, rented, or leased, valued in money, whether paid in money or otherwise:

(1) Without deduction for:

- (a) The cost of property sold,
- (b) The cost of transportation of the property prior to its sale,
- (c) The cost of materials used, labor or service cost, losses, or any other expense.

(2) "Sale price" does not include:

- (a) Retailer discounts allowed and taken on sales,

- (b) The amount charged for goods or services which is refunded to customers either in cash or credit. This shall not apply where the customer, in order to obtain the refund, is required to purchase other goods or services of a greater price than the goods or services refunded or credited,
- (c) The amount of any tax imposed by the United States or with respect to retail sales imposed upon the retailer or consumer,
- (d) The amount charged for finance charges, carrying charges, service charges, interest, or deferred payment sales,
- (e) Charges for transportation of goods after the sale.

16A-2.05 "Tax Officer" means the Treasurer of the Kootenai Tribe of Idaho or a person appointed and authorized by the Kootenai Tribal Council to carry out the provisions of this ordinance in the assessment, review, and collection of sales tax.

16A-2.06 "Taxpayer" means any person subject to, or liable for, any taxes imposed by this ordinance.

16A-2.07 "Tribal Council" means the Kootenai Tribal Council, the governing body of the Kootenai Tribe of Idaho.

16A-2.08 "Buyer" whether as principal, broker, or agent, means a purchaser or consumer of goods or services sold by a vendor.

16A-3 IMPOSITION AND RATE OF THE SALES TAX

16A-3.01 A sales tax is hereby imposed upon each sale at retail at a rate in lieu of, and, unless otherwise specified by the Council, exactly equal to the rate prevailing under Idaho Code § 63-3619, and such amount shall be computed monthly on all sales at retail within the preceding month.

(1) The tax shall apply to, be computed on, and be collected for, all credit, installment, conditional or similar sales at the time of the sale, or, in the case of rentals or services, at such times as rentals or services are charged.

(2) The tax imposed shall be collected by the vendor from the buyer.

(3) The vendor shall calculate the tax upon the entire amount of the purchases of the buyer made at a particular time and not separately upon each item purchased.

16A-3.02 A sales tax is hereby imposed at a rate equal to that imposed by Idaho Code § 67-4718 for renting of a place to sleep, to an individual by a hotel, motel, or campground for a period of less than thirty-one (31) continuous days.

16A-4 EXEMPTIONS

16A-4.01 Subject to applicable laws, the Tribal Council may create exemptions from the sales tax. Such exemptions may include but shall not be limited to the following:

(1) Waiver of the sales tax on new businesses upon request of the merchant.

(2) Individuals.

(3) The sale at retail of goods or services which the Kootenai Tribe of Idaho is prohibited from taxing under the Constitution and laws of the United States.

16A-5 RETURNS AND PAYMENTS

16A-5.01 The taxes imposed by this chapter are due and payable to the Tax Officer monthly on or before the twentieth day of the month succeeding the month for which the taxes were calculated.

16A-5.02 All money collected or received by the Tax Officer from taxes, penalties, interest, and fees, imposed by this chapter shall be credited by him/her to the sales tax account created by this chapter.

16A-5.03 On or before the twentieth day of the month succeeding the month for which the taxes are being calculated, a vendor shall file a return with the Tax Officer in such form as the Tribal Council may prescribe.

16A-5.04 The return shall be filed by every vendor conducting business on the Reservation.

Returns shall be signed by the person required to file the return or by his duly authorized agent.

16A-5.05 The return shall show the total sales subject to tax under this chapter during the reporting period.

16A-5.06 The return shall show the amount of the taxes for the period covered by the return and such other information as the Tribal Council deems necessary for the proper administration of this chapter.

16A-5.07 The person required to file the return shall mail or deliver the return together with a remittance of any tax due to the Tax Officer for the reporting period.

16A-5.08 The Tribal Council, if it deems it necessary, in order to insure payment to or facilitate the collection by the Tax Officer for taxes, may require returns for periods other than monthly periods.

16A-5.09 Gross amounts from rentals or leases of goods or services which may be subject to tax under this chapter, shall be reported and tax paid in accordance with such rules and regulations as the Council may prescribe.

16A-5.10 Subject to applicable laws, the Tax Officer for good cause may extend, for not to exceed one (1) month, the time for making any return or paying any amount to be paid under this chapter.

16A-5.11 The Tax Officer may impose penalties in addition to interest in the event any sales tax payable and due is withheld beyond due periods and without good cause. A ten percent (10%) penalty shall be assessed for each week for which the tax is over due and not paid. Penalties shall not exceed one hundred percent (100%) of the amount of the tax due.

16A-6 ADMINISTRATION

16A-6.01 The Tribal Council shall enforce the provisions of this chapter and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter.

16A-6.02 The Tribal Council shall employ such qualified auditors, accountants, investigators,

assistants, clerks, and other personnel as are necessary for the efficient administration of this chapter, and may delegate authority to its representatives to conduct hearings, or perform any other duties imposed by this chapter.

16A-6.03 Every vendor who files the returns required under this chapter shall keep such records not less than four (4) years from the making of such records.

16A-6.04 As a condition of doing business on the Reservation, a vendor must permit the Tribal Council, or any person authorized in writing by it, to examine the books, papers, records, and equipment, of any person making sales, and to investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

16A-6.05 Vendors whose pertinent records are kept off the Reservation, must bring the records to the Reservation for examination by the Tribal Council, or its representative, upon its request, or, by agreement with the Tribal Council, permit a Kootenai Tribal representative to visit the place where the records are kept, and there examine and duplicate such records.

16A-7 SECURITY FOR TAX

16A-7.01 The Tax Officer, whenever s/he deems it necessary to insure compliance with this ordinance, may require any person subject to this ordinance to place with it such security as the Tax Officer may determine. The amount of the necessary security shall be fixed by the Tribal Council but, except as provided thereafter shall not be greater than three (3) times the estimated average monthly amount payable by such persons pursuant to this chapter. In the case of persons habitually late in their payments under this chapter, the amount of the security shall not be greater than five (5) times the estimated average monthly amount payable by such persons pursuant to this chapter or ten thousand dollars (\$10,000.00), whichever is greater. The amount of the security may be increased or decreased by the Tribal Council at any time, subject to the limitations set forth above.

16A-7.02 Subject to applicable laws, the Tribal Council may sell the security at public auction in order to recover any unpaid tax, interest, or penalties due on any amount required to be collected. Notice of the sale must be given to the person who deposited the security at least fifteen (15) days before the sale; such notice may be given personally or by mail addressed to the person at the address furnished to the Kootenai Tribe of Idaho. Upon such sale, any surplus above the amounts due and the reasonable costs of sale shall be refunded to the person who placed the security.

16A-8 REFUNDS, LIMITATIONS, INTEREST

16A-8.01 If the Tax Officer determines that any amount due under this chapter has been paid more than once, or has been erroneously or illegally collected or computed, the Tax Officer shall state that fact in its records. The Tax Officer shall either credit the excess amount paid or collected toward any amount then due and payable to the Kootenai Tribe from the person, or refund any balance to the person by whom it was paid or to his successors, administrators or executors.

16A-8.02 No such credit or refund shall be allowed or made after three (3) years from the time the payment was made, unless, before the expiration of such period a claim is filed by the taxpayer.

16A-9 RESPONSIBILITY FOR TAXES - CORPORATIONS

16A-9.01 Every person with the duty to account for and pay over any tax imposed by this ordinance on behalf of a corporation, or as an officer or employee of the corporation, or on behalf of a partnership, shall be personally liable for payment of such tax, plus penalties and interest, if s/he knowingly and wilfully fails to carry out his/her duty.

16A-9.02 Any person who is required to collect, truthfully account for, and pay over any tax imposed by this chapter who knowingly and wilfully fails to collect such tax or truthfully account for and pay over such tax or knowingly and wilfully attempts in any manner to evade or defeat any such tax or payment, shall, in addition to other penalties provided by law, be liable for a penalty equal to twice the total amount of the tax evaded, or not collected, or not accounted for and paid over as

well as expenses incurred in attempting to recover such tax.

16A-10 SUCCESSORS' LIABILITY

16A-10.01 If any vendor liable for any amount under this chapter sells out his business or stock of goods, the purchaser of the vendor's business shall make inquiry of the Tax Officer and shall withhold from the purchase price any amount of tax that may be due under this chapter, until such time as the vendor produces a receipt stating that an amount is due.

16A-10.02 If the purchaser of a business or stock of goods fails to withhold from the purchase price as required above, he shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price valued in money.

16A-10.03 The Tax Officer shall, as soon as practical after receiving written inquiry as to the amount due, issue a statement to the purchaser setting forth the amount of tax due by the vendor, if any.

16A-11 DEFICIENCY DETERMINATIONS

16A-11.01 If the Tax Officer is not satisfied with the return or returns of the tax because of errors or omissions discovered in audits, examinations, or in any other way, s/he may compute and determine the amount which is due upon the basis of any information within its possession, or that may come into its possession, and assert a deficiency. One or more deficiency determinations may be made of the amount due. In making such determination, the Tax Officer may offset overpayment against amounts due.

16A-12 JEOPARDY DETERMINATIONS

16A-12.01 If the Tax Officer finds that a taxpayer owing unpaid taxes is about to depart permanently from the Reservation, or to remove his/her property from it, or to conceal his property, or to do any act tending to prejudice or to render wholly or partially ineffectual proceedings to collect tax for a taxable period, the Tax Officer shall thereupon make a determination of the tax or amount of tax, together with interest or penalty required to be collected, noting that fact upon the determination. Upon giving notice and demand, the

amount determined shall be immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by this section, the finding of the Tax Officer, whether made after notice to the taxpayer or not, shall be for all purposes prima facie evidence of the taxpayer's design. Collection proceedings may be instituted immediately in such case.

16A-13 REDETERMINATION

16A-13.01 Any person against whom a deficiency determination is made under this chapter, or any person directly interested, may petition the Tax Officer for a redetermination within thirty (30) days after adequate service or notice; provided, however, that the person against whom the determination is made must pay the tax plus penalty and interest at the same time in order to so petition. If a petition for redetermination is not filed within the thirty (30) day period, the determination becomes final at the end of the period.

16A-13.02 If a petition for redetermination is properly filed within the thirty (30) day period, the Tax Officer shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him/her fifteen (15) days notice of the time and place of the hearing personally or by mail. With appropriate notice, the Tax Officer may reschedule the hearing from time to time as may be necessary.

16A-13.03 The Tax Officer may affirm the determination, or increase or decrease the amount and issue a new determination.

16A-14 APPEALS - INTEREST ON DEFICIENCIES

16A-14.01 A redetermination becomes final when the Tax Officer mails or serves notice to the taxpayer against whom the redetermination is made. Within thirty (30) days of the date upon which the determination or redetermination becomes final the taxpayer may file an appeal of the same with the Court, copies to the Tax Officer, provided, however, that the taxpayer has paid the assessed taxes, penalty and interest. No assessment of a deficiency in respect to the tax imposed by this chapter, no sale of any security to satisfy taxes due, and no proceedings in court for its collection shall be made, begun or prosecuted until notice has been given to the taxpayer, nor until

the expiration of such thirty (30) day period after the decision of the Tax Officer becomes final.

16A-14.02 If an appeal is granted by the Court subject to subsection 16A-14.01 of this section, the appeal date shall be within a reasonable length of time.

16A-14.03 The appeal shall state the grounds for taxpayer's assertion that the determination or redetermination is incorrect or invalid and shall conform to the Rules governing the Court regarding civil procedure. The appellant taxpayer and the Tax Officer shall have the right to a hearing before the Court and the right to present all relevant evidence, including testimony of witnesses, to the Court.

16A-14.04 If the taxpayer does not file an appeal with the Court within the time prescribed, the deficiency shall be assessed and shall become due and payable upon notice and demand from the Tax Officer.

16A-14.05 Interest upon any deficiency shall be assessed at the same time as the deficiency and shall be due and payable upon notice and demand from the Tax Officer, and shall be collected as a part of the tax at the rate of ten percent (10%) per annum from the date prescribed for payment of the tax up to and including the date of the actual payment.

16A-15 PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION

16A-15.01 Subject to Section 16A-17, the amount of taxes imposed by this chapter shall be assessed within four (4) years of the time the return upon which the tax asserted to be due was or should have been filed, whichever is the later, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period; provided, however, if an assessment has been made within the prescribed time, such tax may be collected by levy or by a proceeding in court within a period of seven (7) years after the remedy has been assessed.

16A-16 PENALTIES AND PROPERTY SUBJECT TO LIEN

16A-16.01 If such person liable to pay any tax neglects or refuses to pay the same after demand, the amount of such tax, including any interest,

penalty, or addition to such tax, together with any costs which may accrue in addition thereto, shall be a lien in favor of the Kootenai Tribe of Idaho upon all property rights to property, whether real or personal, belong to such person. To protect the Tribe's interests, the Tax Officer shall, as soon as practicable, file notice of the lien against the property in appropriate records.

16A-17 FALSE RETURN

16A-17.01 In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five (5) years after the date of the discovery of the facts constituting the fraud.

16A-18 KOOTENAI TRIBE OF IDAHO SALES TAX FUND

16A-18.01 There is hereby created a fund to be known as the "Kootenai Tribe of Idaho Sales Tax Fund."

(1) All monies collected under this chapter shall be paid by the Tax Officer into the Sales Tax Fund.

(2) All monies refunded under this chapter shall be paid from the Sales Tax Fund by the Kootenai Tribal Tax Officer to the respective taxpayer.

(3) Unless otherwise provided by law, the Tribal Council shall have discretion to administer the Sales Tax Fund.

16A-19 CONSENT TO JURISDICTION

16A-19.01 Making sales on the Reservation shall be deemed consent to civil and regulatory jurisdiction of the Kootenai Tribal Council, and the Court.

16A-20 SEVERABILITY

16A-20.01 If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any portion of this chapter, such judgment or decree shall not affect the remainder of this chapter.

16A-21 EXEMPTIONS

16A-21.01 The following persons and transactions shall be exempt from taxation under this chapter.

(1) Transactions with the Kootenai Tribe.

(2) Raw agriculture products and food.

(3) Any matter used to produce heat by burning, including wood, gas, petroleum, and coal.

(4) Gas, electricity, and water when delivered to consumers.

(5) Tangible personal property used for the performance of a written contract and executed before the approval of this chapter.

(6) Liquor from the Idaho State Liquor dispensary.

(7) Tangible personal property sold at home yard sales; provided, however, that no more than two such home yard sales per individual per calendar year shall be exempt.

(8) Tangible personal property sold by Reservation residents not in the business of making retail sales.

16A-22 REPEALER

16A-22.01 Any code, ordinance, or resolution of the Kootenai Tribe of Idaho which conflicts in any way with the provisions of this chapter is hereby repealed to the extent that it is inconsistent with or is contrary to the spirit or purpose of this chapter.