

**CHAPTER 16 – BUSINESS LICENSE AND TAX LAW**

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## CHAPTER 16 – BUSINESS LICENSE AND TAX LAW

### 16.1 SECTION 1: LICENSING

- 16.1.1 All individuals, corporations, or partnerships who are Tribal members currently conducting or prior to conducting any business operations within the Red Cliff Reservation shall apply for and obtain a permit to carry on a Business within the Red Cliff Reservation.
- 16.1.2 Any Tribal member or committee or partnership controlled by Tribal members may conduct a concession to sell cigarettes within the Reservation provided s/he secures a Cigarette Sales License.
- 16.1.3 Any Tribal member or committee or partnership controlled by Tribal members may conduct a concession to sell intoxicating beverages provided that s/he first obtains an Alcohol License.
- 16.1.4 The laws and regulations controlling sale of intoxicating beverages pursuant to a Red Cliff Alcohol License shall be identical to those laws of the State of Wisconsin controlling the sale of intoxicating beverages in the State at large.
- 16.1.5 Application for said Permits shall be made to the Red Cliff Legal Department. Permits shall be approved by the Red Cliff Tribal Council, except that renewals shall be approved and issued by the Red Cliff Legal Department without the need for formal Tribal Council action upon certification on a form approved by the Red Cliff Legal Department. (9/23/14)
- 16.1.6 Any individual, corporation, or partnership in violation of this ordinance shall be subject to a civil forfeiture of not more than \$100.00 per day of violation and/or may be subject to a Court order to cease and desist all business operations until a Permit is obtained.

### 16.2 SECTION 2: BUSINESS PERMIT FEES

- 16.2.1 Business permits are valid for one year. Applicant(s) are required to renew their permits on or before May 1<sup>st</sup> of each year. Upon certification that there has been no material change in any information contained within an applicant's most recent application, businesses holding an existing permit may have their licenses renewed within one year of issuance by the Red Cliff Legal Department. For purposes of this section a "material change" shall include (but is not necessarily limited to) a change of physical location, a change in ownership or ownership interests, or a significant change in business receipts, all within the discretion of the Red Cliff Legal Department. (9/23/14)
- 16.2.2 The annual permit fees are as follows:

- (a) Any business with gross receipts below \$10,000.00 per calendar year; (based on the prior calendar year receipts); \$10.00 permit fee.
- (b) Any business with gross receipts between \$10,001.00 - \$30,000.00 per calendar year; (based on prior calendar year receipts); \$50.00 permit fee.
- (c) Any business with gross receipts greater than \$30,001.00 per calendar year; (based on the prior calendar year receipts); \$100.00 permit fee. **(by motion 6/6/2011)**

16.2.3 Additional annual permit fees are as follows:

- (a) Non-refundable application fee \$10.00
- (b) Permit to sell alcohol \$100.00
- (c) Permit to sell cigarettes and/or tobacco \$100.00 **(by motion 6/6/2011)**

### **16.3 SECTION 3: TAXATION**

16.3.1 For the privilege of doing business on the Red Cliff Indian Reservation by means of the operation of a restaurant, bar, liquor store, hotel, motel, campsite, marina, theater, or other enterprise providing recreation, amusement, or entertainment to the public, there is hereby imposed on every non-member engaged in such an operation, a tax on the gross receipts of such an operation.

16.3.2 For purpose of computing the tax, gross receipts shall include the receipts from the sale of all goods and services, which are realized as an incident of the operation on an enterprise, described above, whether or not such sales directly involve the vending of food, drink, shelter, or recreational services.

16.3.3 Receipts from the lease or rental of hotel or motel accommodations, campsites, marina slips or similar docking facilities shall be taxed at the rate of 5% per annum. Receipts from all other operations subject to tax shall be taxed at the rate of 2%.

16.3.4 Sales of food or medicine shall be exempted from the tax herein imposed. The tax herein imposed shall not apply to enterprises directly operated by the United States of an agency thereof.

16.3.5 A non-member, as referred to above, shall include any person, natural or corporate, other than enrolled members of the Red Cliff Band of Lake Superior Chippewa Indians. Where a committee or similar entity claims exemption from the tax on the grounds of membership, the burden of proof shall be on the

committee to prove that both ownership and control of the committee is predominantly in the hands of members of the Red Cliff Band.

**16.4**            **SECTION 4: APPLICATION AND DEPOSIT**

16.4.1           Any person subject to the tax imposed above shall submit an application to the Tribe for a permit to carry on a tax-regulated business. A \$250.00 deposit shall accompany the application, except that where an enterprise has grossed \$50,000 or more in the immediately preceding calendar year, the amount of the deposit shall be \$500.00.

16.4.2           Taxes shall be paid on a quarterly basis and shall be due on the 20<sup>th</sup> of the month following the end of the quarter.

16.4.3           Persons subject to tax, shall file a tribally prescribed return by the aforesaid 20<sup>th</sup> day of the month succeeding each quarter. Said return, shall be accompanied by a copy of any state sales tax return which is to be filed for the similar period. The April return, shall also be accompanied by a copy of the federal tax return, showing receipts from the operation in question. Persons subject to tax, shall file a return in each quarter whether or not the operation has taxable receipts in that quarter. Where an operation suspends doing business, it shall notify the Tribal Treasurer within 30 days of such suspension and file a final return and payment.

16.4.4           Any tax remaining unpaid after the 20<sup>th</sup> day following the taxable quarter shall be subject to interest at the rate of 10% per annum.

**16.5**            **SECTION 5: RED CLIFF TRIBAL MEMBERS EXEMPT FROM ALL STATE SALES TAXES**

16.5.1           No business within the reservation boundaries shall charge state taxes to tribal members living within the reservation boundaries. This requirement shall operate as a condition of each business licensee's continued privilege to do business within the boundaries of the Red Cliff Reservation. Failure to take necessary measures to exempt tribal members from state taxes shall constitute grounds for revocation of a licensee's business permit upon appropriate action by the Red Cliff Tribal Council.

16.5.2           No licensee shall be subject to revocation or to fine or forfeiture under this Chapter where a tribal member has failed to provide adequate proof of tribal membership or residence within the boundaries of the Red Cliff Reservation. Presentation of a valid, current tribal membership card issued by the Red Cliff Enrollment Department shall constitute adequate proof of tribal membership for purposes of this section. Presentation of Wisconsin Department of Revenue Form MF-209 or the following form shall constitute adequate proof of residence within the boundaries of the Red Cliff Reservation for purposes of this section:

“I hereby certify that I am a member of the Red Cliff Band of Lake Superior Chippewa and my residence is located within the boundaries of the Red Cliff Reservation.”

“I hereby acknowledge and agree that it is my responsibility to inform the retailer of any change in residence that may affect my eligibility to purchase goods without the application of Wisconsin taxes.”

Signed:

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(Signature)

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(Print Name)

- 16.5.3 The provision of false information shall entitle the retailer to initiate an action in the Red Cliff Tribal Court against a person providing such false information to recover any and all expenses incurred in connection with determining the retailer’s tax for the sale.
- 16.5.4 The provision of false information for the purposes of obtaining goods or services free from Wisconsin taxes is strictly prohibited. The penalty for violation of this section shall be no less than \$50.00 and no more than \$5,000.00.
- 16.5.5 In addition to revocation of a licensee’s business permit by the Red Cliff Tribal Council, violations of section 16.4.1 shall subject the business owner to a civil remedial forfeiture of not less than \$100.00 and not more than \$5,000.00. Each business transaction, specifically including, but not limited to, each separate sale of goods shall constitute a separate offense for purposes of this section.
- 16.5.6 Failure to immediately cease business activity after revocation of a licensee’s business license by order of the Red Cliff Tribal Council shall subject the business owner to a civil remedial forfeiture of not less than \$100.00 and not more than \$5,000.00. Each business transaction, specifically including, but not necessarily limited to, each separate sale of goods shall constitute a separate offense for purposes of this section.
- 16.5.7 All business licensees, including licensees whose business license has been revoked by order of the Red Cliff Tribal Council, shall comply with all requests for business records in connection with investigations and prosecutions under this Chapter. Failure to respond in a timely manner to such requests for information shall subject the business owner to a civil remedial forfeiture of not less than \$250.00 and not more than \$5,000.00. Each request for information shall constitute a separate offense for purposes of this section.

16.5.8 The requirements of this Chapter shall not apply to the sale of cigarettes, and nothing in this ordinance shall be deemed in any way to affect the Cigarette Tax Agreement executed September 14, 1988 between the Red Cliff Band of Lake Superior Chippewa Indians and the State of Wisconsin. **(08-04-03-B)**

**16.6 SECTION 6: PENALTIES**

16.6.1 Failure to file a return when due, or the filing of a fraudulent return with intent to evade the tax, shall result in a civil penalty equal to half the amount of the tax due, but in any case not less than \$50.00. Where no return has been filed, the Tribal Treasurer shall estimate the amount of taxable receipts on the basis of whatever information is then available, and assesses the tax due and the penalty and interest thereon, on the basis of the foregoing estimate.

The penalty may be waived upon a showing that a failure to file was due to excusable neglect, provided that a proper return, together with payment, is made within thirty (30) days of the due date.

16.6.2 When a person subject to tax has failed to file a return, has filed a fraudulent return, or has failed to pay the tax within 30 days of the date due, the Tribal Treasurer shall formally notify the Tribal Council, which may revoke the permit to carry on a tax regulated business as well as other tribal permits held by the taxpayer. After revocation no new permit shall be issued for at least six months, and only after all taxes, penalties and interest due have been paid in full, and a deposit in the amount of \$1,000.00 has been made.

16.6.3 After notification by the Tribal Treasurer of the failure to file a return, of the filing of a fraudulent return, or the failure to pay a tax within 30 days of the due date, the Tribal Court may order the seizure and sale of such of the taxpayer's property located within the Red Cliff Reservation as may be necessary to satisfy the delinquent tax, together with penalty and interest.

16.6.4 Nothing in the sections above shall operate to prevent the Tribal Council from employing remedies, through courts of competent jurisdiction and otherwise, to recover any taxes, penalties and interest which may be due pursuant to this Article, or to take such steps as may be necessary to prevent a non-permittee, or a revoked permittee, from doing business on the reservation.

**16.7 SECTION 7: DUTIES OF THE TRIBAL TREASURER**

It shall be the duty of the Tribal Treasurer:

16.7.1 To make tax permit applications available, to receive completed applications and deposits, and to transmit them to the Tribal Council for action.

16.7.2 To make tax returns available, to receive completed returns, and to deposit and account for all tax monies received.

16.7.3 To request investigation or tax audits from appropriate tribal officials, and to notify the Tribal Council of any delinquencies of whatever sort.

**16.8 SECTION 8: RIGHT OF AUDIT**

16.8.1 Upon request of the tribal treasurer, a person subject to tax shall make his books and records available for audit by appropriate tribal officials, and supply such information as may be necessary to assess the tax due under § 16.2.1 above. Failure to comply with such a request shall be treated as a failure to file a return for purposes of assessing a penalty.

16.8.2 Any persons assessed a tax, interest or penalties under this Article, or who is subjected to enforcement procedures, shall have the right to be heard before the Tribal Court.

**16.9 SECTION 9: RETAIL SALES TAX**

16.9.1 Title. Pursuant to its authority to provide for the health, safety, and welfare of the Tribe and its members, the Tribal Council (“Council”) of the Red Cliff Band of Lake Superior Chippewa (the “Tribe”) hereby enacts and adopts the following Tribal Tax Ordinance (the “Tax Ordinance” or “Ordinance”).

16.9.2 Declaration. The Tribal Council hereby declares that this Tax Ordinance is adopted to achieve the following and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- (a) To promote the economic growth within the Tribe's jurisdiction;
- (b) To provide increased services to citizens of the Tribe;
- (c) To provide funds for the Red Cliff Band of Lake Superior Chippewa Tribal government; and
- (d) To regulate the sale of products and services sold on lands under the jurisdiction of the Tribe.

16.9.3 Authority.

- (a) This Tax Ordinance is enacted pursuant to the inherent sovereign powers of the Tribal Government and through Article 1.6(g) & (i) of the Tribal Constitution.

- (b) Nothing in this Ordinance shall mean or be construed to constitute a waiver of the sovereign immunity of the Tribe or any entity of the Tribe.

16.9.4

Definitions. Unless a word or phrase is expressly defined elsewhere in this Tax Ordinance, the following words and phrases shall have the indicated meanings:

- (1) “Beverages” means all drinks, whether hot or cold, consumed at the Gaming Facility that are packaged or prepared for sale, including alcoholic beverages, beer and wine.
- (2) “Complimentary” or “Complimentaries” means any provision of goods or services at or in connection with the Tribe's Gaming Facility without cash payment, including rooms and amenities, whether provided through a “Players Club” or through a similar credit system.
- (3) “Fiscal Department” means the department of the Tribal Government that is charged with the management and oversight of the Tribe's budget and financial matters.
- (4) “Fiscal Director” means the Director of the Fiscal Department of the Tribe.
- (5) “Food” means any edible food item, whether hot or cold, consumed at the Retail Seller's Gaming Facility that is prepared for sale, including packaged snack foods, candy, confectionary, chewing gum, or other foodstuff sold for human consumption.
- (6) “Gaming Facility” or “Facility” means any building in which Class III gaming activities or gaming operations occur, or in which the business records, receipts, or other funds of the gaming operation are maintained (but excluding offsite facilities primarily dedicated to storage of those records, and financial institutions), and all rooms, buildings, and areas, including parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation.
- (7) “Gross Hotel Receipts” means the total amount charged for Hotel Rooms. Gross Hotel Receipts are deemed to have been received on a daily basis as rooms are rented; excluded from Gross Hotel Receipts are Occupancy Related Services.
- (8) “Gross Sales Receipts” means the total amount for which Food, Beverages, and tangible personal property is sold, whether paid in money or otherwise, but excluding the value of Complimentaries.



- (9) “Hotel” means any building or facility located on Tribal Land that is used for the lodging of guests for a fee, and includes any recreational vehicle (RV) park, campground site, or marina site for the purposes of providing overnight accommodations to guests for a fee.
- (10) “Hotel Operator” means any Person who owns and operates a Hotel, Recreational Site, or Marina Site on Tribal Land.
- (11) “Hotel Room or Room” means any room or rooms of any kind that are rented and occupied for lodging purposes.
- (12) “Hotel Occupancy Tax” means the tax imposed on Persons for the use or possession, or the right of use or possession of any Room or Rooms, Recreational Site, or Marina Site.
- (13) “Marina Site” means a boat basin located on Tribal land that rents sites or slips in which to dock and/or moor a boat that may also provide services and supplies.
- (14) “Occupancy” or “Use and Occupancy” means the use or possession, or the right to the use or possession, of any Room or Rooms in a Hotel, the right to the use or possession of the furnishings and accommodations accompanying the use and possession of such Room or Rooms; and the use or possession, or the right to the use or possession of spaces, hook-ups and other facilities at a recreational vehicle park, campground site, and marina.
- (15) “Occupancy Related Services” means services related to the Use and Occupancy of a Room, Rooms, campground site, recreational site, and marina; such as, but not limited to, itemized charges that may appear on a bill as Internet, telephone, laundering, utility hook-ups, pay-per view television, or room service delivery fees.
- (16) “Person” means any individual, tribe, tribal entity, sole proprietorship, firm, partnership, corporation, or association.
- (17) “Recreational Site” means any Recreational Vehicle (RV) park or camping site located on Tribal Land that is rented and occupied for lodging.
- (18) “Retail Purchaser” means any Person who purchases Food, Beverages, goods or services in a Retail Sale located at the Tribe's Gaming Facility or Tribal Retailer.
- (19) “Retail Seller” means (i) the Tribal Gaming Facility, (ii) any of the Tribal Gaming Facility's restaurants, delis, food stands, cafes, bars, gift shops or

retail establishments, and (iii) any other retail business outlets of the Tribe, including, but not limited to, Recreation Sites and Marina Sites.

- (20) “Sale at Retail” or “Retail Sale” means a sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or sub-rent, and shall include sales related to (i) the rendering of services, (ii) admission to a place or location where amusement, entertainment, or recreation is provided, (iii) fuel, and (iv) Occupancy Related Services.
- (21) “Tribal Council” or “Council” means the duly elected representatives of the governing body of the Red Cliff Band of Lake Superior Chippewa.
- (22) “Tribal Land” means all lands under the jurisdiction of the Red Cliff Band of Lake Superior Chippewa.
- (23) “Tribal Member” means an enrolled member of a federally-recognized Indian Tribe.
- (24) “Tribal Sales Tax” means the sales tax imposed by the Red Cliff Band of Lake Superior Chippewa pursuant to this Business License and Tax Law.
- (25) “Tribe” means the Red Cliff Band of Lake Superior Chippewa.

#### 16.9.5

##### Tribal Sales Tax.

- (1) **Effective Date.** Section 16.9.5 of this Ordinance shall become effective on August 11, 2011 as to all Retail Sales occurring on or after that date.
- (2) **Scope.** The Tribal Sales Tax imposed in Section 16.9.5(3) is only applicable to Retail Sales that occur at the Tribe's Gaming Facility and at other retail business outlets of the Tribe.
- (3) **Tribal Sales Tax Imposition.** For the privilege of conducting Retail Sales at the Tribe's Gaming Facility and at other retail business outlets of the Tribe, a Tribal Sales Tax is hereby imposed on Retail Sales within the Tribe's Gaming Facility and other retail business outlets of the Tribe.
- (4) **Incidence.** The ultimate incidence of and liability for payment of the Tribal Sales Tax is on the Retail Purchaser, and nothing in this Section shall be construed to impose a tax on distributing, supplying, furnishing, or transporting food, tangible personal property, or on the Retail Seller.
- (5) **Rate.** The Tribal Sales Tax shall be at a rate of 10% of Gross Sales Receipts. (Res. No. 12/23/13A)

- (6) Individuals, Entities and Items Exempt from Taxation. The Tribal Sales Tax levied in Section 16.9.5 shall not apply to the following individuals or entities:
- (a) Enrolled Tribal Members.
  - (b) The Tribe, Tribal Departments, and wholly-owned entities of the Tribe.
- (7) Method for Individual Exemption. When purchasing Food, Beverages, or tangible personal property, it is the responsibility of each Tribal Member to present his or her Tribal Enrollment Card to the salesclerk, waitress, cashier or agent at the time of the sale. The Retail Seller has the right to refuse a tax exemption at the time of sale without proper identification and/or proper presentation of a Tribal Enrollment Card.
- (8) Method for Entity Exemption. When purchasing Food, Beverages, or tangible personal property, it is the responsibility of each Tribal Department or entity of the Tribe to provide a tax-exempt identification number to an employee or agent of the Retail Seller. The Retail Seller has the right to refuse a tax exemption at the time of sale without proper identification and/or proper validation of a Tribal government entity tax-exempt number.
- (9) The Tribal Sales Tax shall not apply to the following items and sales transactions:
- (a) Products sold from vending machines.
  - (b) The amount received or billed by the Retail Seller for remittance to an employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer.
  - (c) Any charges related to the rendering of services.
- (10) Beverages on Gaming Facility Casino Floor. Complimentary beverages provided to patrons on the Gaming Facility casino floor shall be exempt from the Tribal Sales Tax.
- (11) Collection of Tax. The Tribal Sales Tax levied in Section 16.9.5 shall be collected by the Retail Seller and remitted monthly to the Tribe, care of the Tribal Fiscal Department, on or before the fifteenth (15th) day following the end of each calendar month. The Retail Seller shall complete a return for the preceding month on a form prescribed by the Fiscal Director, showing the entire amount of Gross Sales Receipts from

Retail Sales, the allowable deductions due to exemptions, and the amount of tax to be remitted. The monthly return shall be signed by an employee or a duly authorized agent of the Retail Seller, and if applicable, the Person and/or firm preparing the return.

- (12) Liability. The Retail Seller shall not be liable to the Tribe for any Tribal Sales Tax not actually collected from a Retail Purchaser.
- (13) Tribal Sales Tax Account. The Tribal Fiscal Department shall deposit proceeds of the Tribal Sales Tax into the general fund or account of the Red Cliff Band of Lake Superior Chippewa.
- (14) Preventing or Enjoining Collection. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the Red Cliff Band of Lake Superior Chippewa, Legendary Waters Resort and Casino, or against any officer of the Tribe or employee or agent of Legendary Waters Resort and Casino to prevent or enjoin the collection under Section 16.9.5 of this Ordinance for any tax or any amount of tax required to be collected.
- (15) Judicial Review. Nothing in Sub-Section 16.9.5 of this Ordinance shall be construed to confer jurisdiction on a court or judicial body to hear a disputes or causes of action arising from this law.
- (16) Amendments Deemed Part of Section. All amendments of the Business License and Tax Law enacted subsequent to the effective date of Section 16.9.5 of this law codified herein which relate to the Tribal Sales Tax shall automatically become a part of this Section.
- (17) Severability. The invalidity of any clause, sentence, or provision of Section 16.9.5 of this Ordinance shall not affect the validity of part of this law that can be given effect without such invalid part or parts.

#### 16.9.6 Hotel Occupancy Tax.

- (1) Effective Date. Section 16.9.6 shall become effective on August 11, 2011 as to all transactions occurring on or after that date.
- (2) Scope. Section 16.9.6 shall apply to all Hotel Operators located on Tribal Land.
- (3) Imposition of Hotel Occupancy Tax. For the privilege of use and occupancy of a Room in a Hotel, of a Recreational Site, or a Marina Site located on Tribal land, a hotel occupancy tax is hereby imposed on the use and occupancy of a Hotel Room or Rooms, the use and occupancy of any Recreational Site, or the use and occupancy of any Marina Site, located on

lands within the jurisdiction of the Tribe. The hotel occupancy tax shall be imposed on the persons for whom the Room or Rooms, Recreational Site, or Marina Site is provided and shall be collected by the Hotel Operator.

- (4) Incidence. The ultimate incidence of and liability for the payment of the Hotel Occupancy Tax is on the Person using and occupying the Room or Rooms, Recreational Site, or Marina Site, and nothing in Section 16.9.6 of this law shall be construed to impose a tax on the Hotel Operator.
- (5) Rate of Tax. The tax shall be at a rate of 8% of Gross Hotel Receipts.
- (6) Individuals, Entities and Items Exempt from Taxation. The Hotel Occupancy Tax levied in Section 16.9.6(3) shall not apply to the following individuals or entities:
  - (a) Enrolled Tribal Members.
  - (b) The Tribe, Tribal Departments, and wholly-owned entities of the Tribe.
- (7) Method for Individual Exemption. When making a reservation or tendering payment for the Use or Occupancy of a Hotel Room or Rooms, a Recreational Site, or a Marina Site, it is the responsibility of each Tribal Member to present his or her Tribal Enrollment Card to an employee or agent of the Hotel Operator. The Hotel Operator has the right to refuse a tax exemption at the time of sale without proper identification and/or proper presentation of a Tribal Enrollment Card.
- (8) Method for Entity Exemption. When making a reservation or tendering payment for the Use or Occupancy of a Hotel Room or Rooms, Recreational Site, or Marina Site, it is the responsibility of each Tribal Department or entity of the Tribe to provide a tax exempt identification number to an employee or agent of the Hotel Operator. The Hotel Operator has the right to refuse a tax exemption at the time of sale without proper identification and/or proper validation of a Tribal government entity tax-exempt number.
- (9) There shall be an exemption from the Hotel Occupancy Tax for Hotel Rooms, Recreational Sites, or Marina Sites provided on a Complimentary basis, or purchased with reward points associated with the Gaming Facility's Player's Club or other promotional credits.
- (10) The Hotel Occupancy Tax shall not apply to fees or charges itemized on a Hotel bill and associated with Internet, telephone, pay-per view television, laundering, room service delivery or other Occupancy Related Services.

- (11) **Collection of Tax.** The Hotel Occupancy Tax levied in Section 16.9.6(3) shall be collected by the Hotel Operator and remitted monthly to the Tribe, care of the Tribal Fiscal Department, on or before the fifteenth (15th) day following the end of each calendar month. The Hotel Operator shall complete a return for the preceding month on a form prescribed by the Fiscal Director, showing the entire amount of Gross Hotel Receipts from such Occupancy, the allowable deductions due to exemptions, and the amount of tax to be remitted. The monthly return shall be signed by the Hotel Operator or the Operator's duly authorized agent, and if applicable, the Person and/or firm preparing the return.
- (12) **Liability.** The Hotel Operator shall not be liable to the Red Cliff Band of Lake Superior Chippewa for any tax not actually collected from Persons subject to the Hotel Occupancy Tax.
- (13) **Hotel Occupancy Tax Account.** The Tribal Fiscal Department shall deposit proceeds of the Hotel Occupancy Tax into the general fund or account of the Red Cliff Band of Lake Superior Chippewa.
- (14) **Preventing or Enjoining Collection.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the Red Cliff Band of Lake Superior Chippewa, Legendary Waters Resort and Casino, or against any officer of the Tribe or employee or agent of Legendary Waters Resort and Casino to prevent or enjoin the collection under Section 6 of this Ordinance for any tax or any amount of tax required to be collected.
- (15) **Judicial Review.** Nothing in Section 16.9.6 of this law shall be construed to confer jurisdiction on a court or judicial body to hear a disputes or causes of action arising from this Ordinance.
- (16) **Amendments Deemed Part of Section.** All amendments of the Tax Section enacted subsequent to the effective date of Section 16.9.6 codified herein which relate to the Hotel Occupancy Tax shall automatically become a part of this Section.
- (17) **Severability.** The invalidity of any clause, sentence, or provision of Section 16.9.6 of this Ordinance shall not affect the validity of part of this Ordinance that can be given effect without such invalid part or parts.

#### 16.9.7 Construction Tax (8/3/2015)

- (1) **Effective Date.** Section 16.9.7 shall become effective on October 1, 2015 as to all transactions occurring on or after that date.

- (2) Scope. Section 16.9.7 shall apply to all individuals or entities awarded a contract by The Red Cliff Band of Lake Superior Chippewa Indians and all tribally-owned and operated entities or enterprises including but not limited to the Red Cliff Housing Authority, Legendary Waters Resort & Casino and the Red Cliff Business Development Corporation where total payments provided exceeds one thousand dollars (\$1,000). **(12/05/16)**
- (3) Imposition of Construction Tax. For the privilege of doing business with the Red Cliff Tribe, a construction tax is hereby imposed on all contracts awarded by the Tribe in excess of one thousand dollars (\$1,000). This construction tax shall be imposed upon the individual, entity or tribally owned and operated entity or enterprise that is awarded the contract and shall be collected by the Tribal Accounting Office from contract proceeds. **(12/05/16)**
- (4) “Construction” shall be construed broadly and includes the building or altering of structures, parking lots, and roadways as well as any excavation, demolition, remodeling, clearing, landscaping, architectural and/or engineering services or other related activity. **(6/21/16H)**
- (5) Incidence. The ultimate incidence of and liability for payment of the Construction tax is upon the individual or entity that is awarded the contract. **(12/05/16)**
- (6) Rate of tax. The tax shall be at a rate of five percent (5%) of the awarded contract amount.
- (7) Individuals, Entities Exempt for Taxation. The Construction Tax levied in Section 16.9.7(3) shall not apply to the following individuals or entities:
  - (a) Enrolled Red Cliff tribal members
  - (b) Corporations, partnerships or other registered business organizations whose Red Cliff Tribal member owners maintain at least fifty one percent (51%) ownership interest
  - (c) The Tribe, Tribal Departments, and wholly-owned entities of the Tribe.
- (8) Method for Claiming Exemption. Individuals seeking an exemption from this section shall furnish proof of Tribal enrollment upon request. Entities seeking an exemption on the basis of Red Cliff tribal member ownership shall furnish satisfactory proof of requisite tribal member ownership through certification via forms required by the Red Cliff Accounting Department verifying tribal membership and percentage ownership. All

determinations by the Tribal Fiscal Department concerning exemption eligibility shall be final, conclusive, and nonappealable.

- (9) Collection of Tax. The Construction Tax levied in Section 16.9.7(3) shall be collected by the Tribal Fiscal Department upon award of the contract to Contractor and prior to distribution of remaining contract proceeds.
- (10) Construction Tax Account. The Tribal Fiscal Department shall deposit proceeds of the Construction Tax into the general fund or account of the Red Cliff Band of Lake Superior Chippewa.
- (11) Preventing or Enjoining Collection. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the Red Cliff Band of Lake Superior Chippewa, or against any officer of the Tribe or employee or agent of the Tribe to prevent or enjoin the collection under Section 7 of this Ordinance for any tax or any amount of tax required to be collected.
- (12) Judicial Review. Nothing in Section 16.9.7 of this law shall be construed to confer jurisdiction on a court or judicial body to hear a disputes or causes of action arising from this Ordinance.
- (13) Amendments Deemed Part of Section. All amendments of the Tax Section enacted subsequent to the effective date of Section 16.9.7 codified herein which relate to the Construction Tax shall automatically become a part of this Section.
- (14) Severability. The invalidity of any clause, sentence, or provision of Section 16.9.7 of this Ordinance shall not affect the validity of part of this Ordinance that can be given effect without such invalid part or parts.

**16.10**      **SECTION 10: PROPERTY TAX: POWER LINES AND UTILITY LINES(12/19/2017)**

16.10.1      Findings. The Tribal Council finds that the power to tax the significant power lines and utility lines that are present on its reservation is:

- (1) An essential attribute of tribal sovereignty;
- (2) A necessary instrument of self government and territorial management;  
and
- (3) A means for the Tribe to raise revenue to fund essential governmental services.



- 16.10.2 Purpose. The purpose of this section is to strengthen tribal sovereignty, strengthen tribal to fund essential governmental services.
- 16.10.3 Authority. The Tribal Council enacts this Ordinance pursuant to its inherent sovereign authority and its authority under Art. VI, Sections 1(g) and (p) of the Tribe's Constitution.
- 16.10.4 Scope. This section applies to all power lines and utility lines located on the reservation except those on land owned in fee simple title by non-members of the Tribe.
- 16.10.5 Definitions.
- (1) “Person” includes a natural individual, partnership, corporation, association, other legal or fiduciary entity, and a public entity.
  - (2) “Personal property” means all goods, wares, merchandise, chattels, and effects, of any nature or description, having any real or marketable value, and not included in the term “real property.”
  - (3) “Reservation” means all land within the exterior boundaries of the Red Cliff Band of Lake Superior Chippewa reservation established under the authority of the 1854 Treaty of La Pointe.
  - (4) “Real property” means land as well as all structures and other improvements thereon, and all fixtures and rights and privileges appertaining thereto.
  - (5) “Service Line” means a utility line running from a main line, transmission line, or distribution line that is used only for supplying telephone, water, electricity, gas, internet service, or other utility service to a house, business, or other structure. In the case of a power line, a service line is limited to a voltage of 14.5 kv or less, or a voltage of 34.5 kv or less if serving irrigation pumps and commercial and industrial uses.
  - (6) “Tribal Court” means the Red Cliff Band Tribal Court, including the Tribe's court of appeals.
  - (7) “Tribal instrumentality” means any housing authority, utility, corporation, partnership or other entity that is owned whether in whole or in part by the Tribe and whose board of directors or other managers includes at least one director or manager that is appointed, directly or indirectly, by the Tribal Council. An entity's directors or managers are indirectly appointed by the Tribal Council if the entity is within a hierarchy of affiliated or subsidiary entities whose management is ultimately subject to the Tribal Council's appointment and removal authority.

- (8) “Tribe” means the Red Cliff Band of Lake Superior Chippewa Indians.
- (9) “Utility line” means all personal property and real property used or capable of being used to transmit or distribute electricity, oil, gas, internet, telephone or telecommunication service but does not include service lines.

16.10.6 Property Taxes. Taxes shall be levied, under this section, upon all power lines and utility lines except those that are exempt from taxation. Real property interest taxes and personal property taxes are deemed to be levied when the tax roll in which they are included has been delivered to the Tribal treasurer. When so levied such taxes are a lien upon the property against which they are charged. That lien is superior to all other liens, except a purchase money real estate mortgage that is recorded before the lien is filed under this section, including any extension or refinancing of that purchase money mortgage, or an equivalent security interest, or a 2nd or subsequent mortgage that is recorded before the lien is filed under this section, including any extension or refinancing of that 2nd or subsequent mortgage.

16.10.7 Exemptions. The following shall be exempt from the property tax under this section:

- (1) A personal or real property interest of the Tribe, a Tribal instrumentality or member of the Tribe;
- (2) A personal or real property interest of the United States;
- (3) A personal or real property interest of the State of Wisconsin;
- (4) A real property or personal property interest that has been granted an express property tax exemption in a lease, right-of-way agreement, or other agreement with the Tribe; and
- (5) Real property or personal property to the extent it is located on land owned in fee by non-members of the Tribe.

16.10.8 Assessment. On January 1 of each year, the Tribe shall levy a tax on the owner of any power line or utility line equal to \$.50 multiplied by the length (in feet) of the portion(s) of the line that are subject to taxation under this section, provided that such fees may be expressly waived by the Tribe in a Right-of-Way Agreement or other agreement. After 2021, the tax shall be adjusted each year based on the cost of living increases that have occurred for Social Security Payments.

16.10.9 Due Date and Late Payment Fee. All taxes assessed under this section shall be due within 30 days of assessment. Late payments shall accrue an interest charge of one (1%) percent per month.

- 16.10.10 Assessor. The Tribe shall appoint a qualified person to make assessments under this section.
- 16.10.11 Judicial Review. The Tribal Court shall be the exclusive forum to obtain judicial review of any dispute arising under this section, including, but not limited to, challenges relating to the Tribe's jurisdiction and the assessments made by the Tribe's assessor. The taxpayer shall have the right to contest any assessment with competent evidence.
- 16.10.12 Time of Taking Effect. This section shall take effect upon enactment by the Tribal Council, subject to any implementation delays explicitly stated in the resolution of approval.
- 16.10.13 Severability. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.
- 16.10.14 Repealer. Any other acts and parts of acts inconsistent with this Ordinance are hereby repealed.