

**RINCON BAND OF LUISEÑO INDIANS
RINCON INDIAN RESERVATION, CALIFORNIA**



**RINCON TRIBAL TAX ORDINANCE
RINCON TRIBAL CODE § 4.400**

Adopted on July 30, 2002

RINCON TRIBAL TAX ORDINANCE

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GENERAL PROVISIONS

§ 4.400 TITLE

This Ordinance shall be known as the Rincon Tribal Tax Ordinance.

§ 4.401 AUTHORITY

This Ordinance is adopted by the Rincon Business Committee pursuant to Section 6 of the Articles of Association of the Tribe, and pursuant to the inherent sovereignty of the Tribe.

§ 4.402 FINDINGS AND PURPOSE

(a) The Rincon Band of Luiseño Mission Indians is a federally recognized Indian tribe which exercises jurisdiction over the lands within the external boundaries of the Rincon Reservation, consistent with its Articles of Association and Tribal laws and the Constitution and laws of the United States.

(b) As the governing body of the Tribe in accordance with the authority of its Articles of Association, the Business Committee is responsible for territorial management, tribal self-government and economic growth to ensure that residents of the Rincon Reservation enjoy adequate employment, health care, educational opportunities, social and other governmental services.

(c) As part of its effort to provide essential government services on the Rincon Reservation that benefit both tribal members and non-tribal patrons and businesses including, by way of illustration and not limitation, a judiciary that includes a tribal bar, trial and appellate forums, health and wellness services, fire protection and prevention, law enforcement, administration of education, housing and elder programs, water, wastewater and other utility services, land use planning, environmental protection and enforcement, roads maintenance and cultural preservation programs, the Tribe must raise needed revenue to pay for the current and future expansion of governmental services to attain and maintain tribal self-government and self-sufficiency.

(d) Due to increased growth and land use pressure on the Reservation, and decreased financial support from the United States government in connection with its trust obligation to the Tribe, the Tribe lacks sufficient revenue to continue to serve as the primary governmental provider of social infrastructure and services that underlie a capable tribal government and any well functioning society.

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(e) The Tribe has made significant investments and assumed substantial risk to create tribally-owned commercial enterprises to diversify economic development on the Reservation, including, but not limited to, a Class III gaming enterprise and other commercial enterprises.

(f) It is anticipated that on-Reservation tribally-owned commercial enterprises will be a source of significant tax revenue to the Tribe as a means to fund tribal government operations, the provision of government services and a major source of on-Reservation employment.

(g) In order to assert the Tribe’s right to self-government, its regulatory functions or services and taxing power over on-Reservation commercial activities and to ensure taxpayers are accountable for tribal government operations and the provision of services provided by the Tribe, the Tribe desires to amend the Rincon Tax Ordinance to provide straightforward, fair, and efficient procedures for the licensing and regulation of commercial activities, and the levy and collection of certain taxes for the benefit of the Tribe.

(h) It is the intent of the Tribe that this Ordinance to protect the Tribe’s right to self-government against any unlawful infringement of its sovereignty through pre-emption of any conflicting tax imposed on any commercial enterprises operating on the Reservation by the state of California or any of its governmental subdivisions, including San Diego County, consistent with the provisions of the Federal Indian Trader Statutes, 25 U.S.C. §§ 261-264 *et seq.*, the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*, and applicable principles of federal law.

§ 4.403 DEFINITIONS

Except as otherwise provided, the following terms are defined as follows:

(a) **“Business”** means all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect but not casual activities or sales.

(b) **“Collector”** means the Treasurer of the Tribe, or his or her designee, charged with carrying out the administrative provisions of this Ordinance.

(c) **“Essential government services”** means government services provided by the Tribe that includes, but is not limited to, development, operation and

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maintenance of infrastructure including financing through borrowing and pledging of governmental tax revenues to raise capital for sidewalks, roads, and utilities, and other governmental incentives, such as, tax credits, deductions or rebates for economic recovery, reinvestment or stimulus purposes; services such as fire protection and law enforcement; a judiciary that includes a Tribal bar, trial and appellate forums; buildings dedicated to governmental operations; costs of administering Tribal tax programs, Tribal fleet maintenance, including transportation vehicles and related costs; Tribal administration costs of programs for health and wellness services, fire protection and prevention, contract law enforcement with the San Diego County Sherriff and the cost of Tribal law enforcement services, administration of education, housing and elder programs, water, wastewater and other utility services, land use planning, environmental protection and enforcement, roads maintenance and cultural preservation programs.

(d) **“Gross income”** means gross receipts of a Taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both, and without any deduction on account of losses. In the context of a hotel occupancy tax, gross income means the gross receipts of a Taxpayer derived solely from the use or possession, or from the right to use or possess a room or space in a hotel operated by the Taxpayers in which the room costs twenty- dollars (\$20.00) or more each day.

(e) **“Gross proceeds of sales”** means the value proceeding or occurring from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind or losses, but cash discounts allowed and taken on sale shall not be included as gross income; “gross income” or “gross proceeds of sale” shall not be construed to include goods, wares or merchandise, or value thereof, returned by customers when the sale price is refunded either in cash or by credit, nor the sale of any article accepted as part payment on any new article sold, if and when the full sale price of the new article is included in the “gross income” or “gross proceeds of sales” as the case may be.

(f) **“Gross receipts”** means the total amount of the sale, lease or rental price, as the case may be, of the retail sales or retailers, including any services that are part of the sales, valued in money, whether received in money or otherwise, including receipts, cash, credits and property of every kind or nature, any amount for which credit is allowed by the seller to the purchaser without any deduction therefrom on account of the cost of property sold, materials used, interest paid, losses or any other expense, but not including cash discounts allowed or taken, nor the sale price of property returned by customers, when the full sale price thereof is refunded with cash or by credit, promotional allowances, defined as the retail value of complimentary food, beverages, merchandise, and tokens for

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gaming provided to customers as promotional items, nor the amount of any federal tax upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(g) **“Hearing officer”** means a person appointed by the Tribe for administrative review purposes as provided in Section 4.462(d) below.

(h) **“Hotel”** means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the Reservation offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient; provided however, that hotel does not mean licensed foster homes, rest homes, sheltered care homes, nursing homes, group homes, or primary health care facilities.

(i) **“Hotel occupancy tax”** means the tax levied by the Tribe on hotel stays within the Reservation.

(j) **“Indian”** means an enrolled member of a federally-recognized Indian tribe as evidenced by a valid tribal identification card.

(k) **“Occupancy”** (of real property) means any occupancy or use, or any right to occupy or use, real property including any improvements, rights, or interests in the property.

(l) **“Operator”** means the person who is the proprietor of the hotel, whether in capacity of owner, leasee, subleasee, mortgagee in possession, licensee, or in any capacity. Where the operator performs functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Ordinance and shall have the same duties and liabilities as his principal and compliance by either, with the applicable provisions of this Ordinance, shall be considered compliance by both.

(m) **“Person”** means any individual, firm, partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit, the United States, any Indian tribe other than the Rincon Tribe, state, or any of the aforementioned political subdivisions, departments or agencies thereof. Person shall not mean the Rincon Tribe, or any political subdivisions thereof, including any business that is solely owned by the Tribe. For the purposes of this Ordinance, a person will be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which the person is affiliated. A subsidiary corporation

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will be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

(n) **“Property”** or an **“interest in property”** is “used for utility purposes” if it was granted, or is used, in connection with operation of a utility, as that term is defined herein.

(o) **“Reservation”** means the Rincon Reservation, and includes all land within the limits of the Rincon Reservation, notwithstanding the issuance of any patent, and, all Indian allotments or other lands held in trust for a Rincon Tribal Member, including rights of way running through the same, and any additional lands added to the Reservation in the future subsequently taken in trust by the United States for the benefit of the Tribe.

(p) **“Retailer”** means a person engaged in the business of making sales at retail and, when in the opinion of the Collector it is necessary for the efficient administration of this Ordinance, including dealers, distributors, supervisors, employers and salesmen, representatives, peddlers or canvassers as the agents of such dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, whether in making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers.

(q) **“Retail sale or sale at retail”** means a sale for any purposes other than the resale in the form of tangible personal property, but the expressions “transfer of possession,” “lease” and “rental” as used in the definition of “sale” mean only such transactions as are found upon investigation to be in lieu of sales as defined without the word “lease” or “rental.”

(r) **“Sale”** means a transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property, for a consideration or any agreement therefore, including any transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; it also includes the fabrication of tangible personal property for consumers who furnish either directly or indirectly the materials used in fabrication work or furnishing, preparing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property; it also includes the furnishing of telecommunications services, gas, electric power and water and other utility service commodity.

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(s) **“Tangible personal property”** means personal property which may be seen, weighed, measured, felt, touched or is in any other manner perceptible to the human senses.

(t) **“Tax Collector”** means **“Collector”** as defined above in Section 4.403(b).

(u) **“Taxpayer”** means any person charged with the payment of taxes under this Ordinance.

(v) **“Tax year or taxable year”** means the year beginning January 1.

(w) **“Transient”** means any person who for any period of not more than thirty (30) consecutive days obtains lodging or the use of any lodging space in any hotel.

(x) **“Tribal Council”** shall mean the Business Committee of the Rincon Band of Luiseño Indians.

(y) **“Tribe”** means the Rincon Band of Luiseño Mission Indians, its government, and any of its political subdivisions, departments, agencies or enterprises.

(z) **“Utility companies”** means companies or other business entities that supply, manufacture, deliver or otherwise make available by pipeline, transmission line, satellite or other mechanisms, gas, water, telephone, telecommunication, internet and/or electricity to persons or entities.

(aa) **“Utility”** means any legal entity whether publicly or privately owned performing or maintaining any of the following businesses or services or in selling any of the following commodities, or for hire, sale or consumption by other persons:

- (1) Railroad, including railroad car companies;
- (2) Communication and data transmission, including, telegraph, telephone, cellular, wireless, satellite, mobile radio, paging;
- (3) Broadcasting and transmission, including, television, cable television, radio;
- (4) Electricity, including, generation, transmission, distribution;
- (5) Gas, including, generation, transmission, distribution;

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- (6) Pipeline, including, transmission of natural gas, gas, diesel, oil, or any other similar commodities; or
- (7) Any other similar system for transmitting or distributing services or commodities; but does not include roads or highways constructed or maintained by the United States, the Tribe, or the State of California or a subdivision thereof.

(bb) “Utility Owner” means any person who owns any interest in utility property as grantee, lessee, permittee, assignee, sublessee, or transferee. In the case of parties to a joint venture or operating agreement, the Tribe shall determine whether a joint venture partner or an operator is an owner in light of the terms of the agreement on the basis of the parties’ respective participation in and entitlement to income or profits, assets and management of the venture or operation.

(cc) “Utility Property” means all property, real and personal, tangible and intangible, used for utility purposes under any agreement conferring rights to use or possess lands on the Reservation, including but not limited to, a lease, right-of-way, use permit or joint venture or operating agreement with the United States or a beneficial owner of land. Utility property shall include all improvements placed on trust lands within the exterior boundaries of the Reservation pursuant to such an agreement.

(dd) “Utility Taxes” includes the tax and any interest, penalties, or costs imposed or assessed pursuant to this Ordinance.

TRIBAL BUSINESS LICENSE

§ 4.404 BUSINESS LICENSE

Every person having a gross proceeds of sales or gross income upon which a tax is imposed pursuant this Ordinance, desiring to engage or continue in business, shall make application to the Tax Collector for a business license, accompanied by a fee, the amount of which shall be established by the Treasurer pursuant to a fee schedule for the applicable tax year, and no person shall engage or continue in business until he or she shall have such license. In the event that no license is granted, the application fee shall not be returned to the applicant but shall instead be applied to the costs of processing such application.

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§ 4.405 APPLICATION

An application for a business license shall be submitted in writing to the Tax Collector on a form approved by the Tax Collector which shall at a minimum include:

(a) Department of the Interior federal license number pursuant to Federal Indian Trader Statutes, 25 U.S.C. §§ 261-264 *et seq.*, and its implementing regulations;

(b) A description of business or trade and size classification;

(c) The name and address of the owner(s) and operator(s) of the business or trade;

(d) The trade name to be used by the business or trade;

(e) The physical location;

(f) Acknowledgement of and express consent to the application of Tribal law to the business or trade, including written affirmation that the applicant is knowingly entering into a consensual relationship with the Tribe, including consent to jurisdiction of the Tribe, generally, and the Rincon Tribal Court, specifically, and extending to all matters reasonably related to the applicant's business or trade with the Tribe or its members.

§ 4.406 FEE

A check or money order, payable to the Rincon Band of Luiseño Indians, shall accompany each application in full payment of the business license fee provided for under Section 4.404 of this Ordinance.

§ 4.407 REVIEW

Upon receipt of each application the Tax Collector shall conduct such investigation of the applicant or its owner(s) or operator(s) as he or she deems necessary for the protection of the tribal welfare and public good. If as a result of the investigation, the applicant's (or owner or operator) character or business responsibility is found wanting or otherwise unsuitable, the Tax Collector will notify the applicant that the application is disapproved and that no license will be issued. If the character and business responsibility of the applicant (or owner or operator) are found to be satisfactory, the Tax Collector shall

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endorse and deliver a license to the applicant pursuant to Section 4.408 of this Ordinance. For purposes of applicant's compliance with Section 4.405(a) only, the Tax Collector, in his or her sole and absolute discretion, may issue an interim license to an applicant subject to satisfaction of Section 4.405(a) as a condition subsequent for a license. Subject to the Federal Indian Trader Statutes, 25 U.S.C. §§ 261-264 *et seq.*, and its implementing regulations, the premises applicable to any license issued hereunder shall exclude the gaming floor of the Tribe's gaming facilities but may include specific portions of the gaming facilities where gaming activities are not available.

§ 4.408 ISSUANCE

Upon approval of the application by the Tax Collector and payment of the fee, a business license shall be issued to the applicant on a form approved by the Tax Collector. The business license shall bear the signature of the Tax Collector or his authorized representative. The license shall specifically describe the business or trade to be conducted, any particular regulation thereof, the name of the owner(s) and operator(s) of the business or trade and its location on the Reservation.

§ 4.409 DURATION

The business license required by Section 4.404 shall be valid for one year and be renewed annually.

§ 4.410 CANCELLATION

Upon the failure of any person to pay a tax or penalty, or to make records available or to file a return as required by Section 4.414, 4.460 & 4.450 of this Ordinance, or have a valid Tribal business license, the Tax Collector shall give such person notice of intent to cancel the business license. If within five (5) days the person so notified shall request it, he or she shall be granted a hearing before the Tax Collector. Upon a finding by the Tax Collector that a tax or penalty is unpaid and has been so at least thirty (30) days, or if no request for hearing has been made within five (5) days after notification, as herein provided, the business license issued under Section 4.408 shall be cancelled and such person shall not be relicensed until all such taxes and penalties due hereunder shall have been paid.

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§ 4.411 REISSUANCE

Any person losing his or her business license, as prescribed in Section 4.410 shall be charged a fee the amount of which shall be established by the Treasurer pursuant to a fee schedule for the applicable tax year.

§ 4.412 TRANSFERABILITY; DISPLAY

The license prescribed in Section 4.404 shall be non-transferrable, and shall be conspicuously displayed in the applicant's place of business.

§ 4.413 SEPARATE LICENSE FOR EACH LOCATION

A person engaged in or conducting a business in two (2) or more locations shall procure a license for each of such locations.

SALES TAX

§ 4.414 IMPOSITION AND RATE

A tax is hereby imposed on the sale of all tangible personal property sold at retail on the Reservation. The minimum rate of the tax hereby imposed shall be equivalent to one-hundred percent (100%) of the prevailing sales and use tax rate applicable to retail sales in unincorporated San Diego County and may include a district tax rate up to twenty-five hundredths of a percent (.25%), as each may be adjusted from time to time. The tax due for a period is determined by first calculating applicable gross receipts for a period, then multiplying those gross receipts by the applicable tax rate.

§ 4.415 METHOD OF COLLECTION

The tax hereby imposed shall be collected by the Retailer receiving the gross receipts from the sale.

§ 4.416 TAX AS DEBT TO TRIBE

The tax required to be collected by the Retailer constitutes a debt owed by the Retailer to the Tribe.

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§ 4.417 PRESUMPTION THAT ALL GROSS RECEIPTS ARE TAXABLE

For the purpose of the proper administration of Section 4.414 and to prevent evasion of the sales tax, it is presumed that all gross receipts from Retail Sales are subject to tax until the contrary is established.

§ 4.418 EXEMPTIONS

The provisions of Section 4.414 imposing a sales tax shall not apply to business transactions or retail sales described in this Section 4.418. Taxpayers engaged in such transactions shall document all exempt sales using forms provided or approved by the Tax Collector.

(a) Sales of tangible personal property made by a Retailer, including a contractor engaged in the business of contracting pursuant to a time and material contract, where title to the tangible personal property sold transfers on the Reservation to either the Tribe or an Indian.

(b) The gross proceeds of sale or gross income derived from the sale of livestock, poultry, seed, feed, fertilizer, insecticides, fungicides, seed-treating chemicals and other agricultural chemicals and supplies, to persons engaging or continuing in the business of farming, ranching or feeding livestock or poultry, but not including equipment for use or consumption in these businesses.

(c) Sales made to the Tribe or an Indian.

(d) Sales made to the United States government.

(e) Any sales tax exemption expressly permitted under California state law as determined by the Tribal Council.

(f) Any sales tax exemption expressly agreed to by the Tribal Council and set forth in writing in a written contract or agreement between the Tribe and a third party.

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HOTEL OCCUPANCY TAX

§ 4.419 HOTEL OCCUPANCY TAX IMPOSITION & RATE

A tax is hereby imposed on any person who, under lease, concession, permit, right of access, license, contract or agreement, pays for the use or possession of a room or space in a hotel on the Reservation. The rate of the tax hereby imposed shall be equivalent to one hundred (100%) percent of the prevailing hotel occupancy tax rate of unincorporated San Diego County as adjusted from time to time. The tax due is determined by first calculating the cost of the room for the period of hotel stay, then multiplying the total cost of the room by the applicable tax rate.

§ 4.420 METHOD OF COLLECTION

The tax hereby imposed shall be collected by the Taxpayer owning, operating, managing, or controlling a hotel who shall collect for the Tribe the hotel occupancy tax that is imposed by Section 4.419 and calculated on the amount paid for a room in the hotel.

§ 4.421 TAX AS DEBT TO TRIBE

The tax required to be collected by the Operator constitutes a debt owed by the Operator to the Tribe.

§ 4.422 EXEMPTIONS

No tax shall be imposed:

- (a) Upon any Tribal, federal or state of California officer or employee when on official business;
- (b) Upon any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or International treaty;
- (c) Enrolled members of the Tribe;
- (d) Persons who have the right to use or possess a hotel room for at least thirty (30) consecutive days;

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(e) Upon any person who receives a free or complimentary room as a promotional allowance or otherwise, where the only consideration provided to the hotel is publicity value.

CIGARETTE AND TOBACCO TAX PRODUCTS

§ 4.423.00 DEFINITIONS

(a) **“Band Directory”** means the Directory of Licensed Tribal Manufacturers maintained by the Tax Collector pursuant to Chapter 4.423.23 of this Ordinance.

(b) **“Band List”** means the List of Approved Distributors maintained by the Tax Collector pursuant to Chapter 4.423.19 of this Ordinance.

(c) **“Carton”** or **“Carton of Cigarettes”** means, unless otherwise indicated, a carton of two hundred (200) Cigarettes.

(d) **“Cigarette and Tobacco Tax Auditor”** means, unless otherwise indicated, the person selected by the Tax Collector to conduct Audits pursuant to the Cigarette and Tobacco Tax Chapter of this Ordinance.

(e) **“Cigarette”**, unless otherwise indicated, means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of tobacco and such roll weighs over three pounds per thousand.

(f) **“Court”** means the Rincon Tribal Court, and includes the Rincon Tribal Court of Appeals.

(g) **“Distributor”** means any person who engages in making sales for resale of Cigarettes or Tobacco Products.

(h) **“Directory of Tribal Manufacturers”** means the Directory of Tribal Manufacturers prepared by the Tax Collector pursuant to the Cigarette and Tobacco Taxes Chapter of this Ordinance.

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(i) **“Licensed Tribal Distributor”** means a distributor who is a federally recognized Indian tribe or a member of such a tribe and who meets the requirements of this Ordinance, and who is licensed by the Band as a “Licensed Tribal Distributor”.

(j) **“Licensed Tribal Manufacturer”** means a Manufacturer who:

- (1) Is majority-owned by a federally recognized Indian tribe or an enrolled member or members of a federally recognized Indian tribe;
- (2) Is licensed by a federally recognized Indian tribe to manufacture and who does manufacture its Cigarettes or Roll Your Own Tobacco within the licensing tribe’s Indian Country;
- (3) Is in possession of any necessary federal permits and is otherwise in compliance with applicable federal laws related to the manufacture of Cigarettes and Roll Your Own Tobacco;
- (4) Is licensed by the Rincon Band as a Licensed Tribal Manufacturer;
- (5) Is listed on the Tribal Directory; and
- (6) Is in full compliance with the Agreement and Implementing Rincon Band Law.

(k) **“Licensed Tribal Manufacturer”** shall include the limited number of federally recognized tribes with Indian Country both within the United States and Canada (“Trans Border Tribes”). Trans Border Tribes and their members are eligible to become Licensed Tribal Manufacturers and Licensed Tribal Distributors if they either manufacture Cigarettes or RYO Tobacco within the Tribe’s United States Indian Country, or such tribes or their members manufacture Cigarettes and RYO Tobacco within the Tribe’s Canadian Indian Country, but only if such product is shipped from the Tribe’s Indian Country either in Canada or the United States through a tribal nation to tribal nation chain of commerce. A tribal nation to tribal nation chain of commerce means that the product is sold from manufacturer to distributor to retailer through tribal or Indian owned businesses operation within either Indian Country or on a First Nation Reserve in Canada.

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(l) **“Manufacturer”** means a person that physically manufactures, fabricates, or assembles Cigarettes or Tobacco Products, including Roll Your Own Tobacco Products.

(m) **“Non Participating Manufacturer”** or **“NPM”** shall have the same meaning as provided for that term in the Master Settlement Agreement.

(n) **“Notice of Infraction”** shall mean a Notice of Infraction issued pursuant to Chapter 4.423.44.

(o) **“Pack”** or **“Pack of Cigarettes”** means, unless otherwise indicated, a pack of twenty (20) Cigarettes.

(p) **“Remote Retail Sales”** means retail sales in which the purchaser is not in the physical presence of the seller.

(q) **“Retail Selling Price”** means the price paid by the consumer for Cigarettes, Roll Your Own Tobacco, or Tobacco Products, which price includes applicable Band Taxes.

(r) **“Rincon Indian Country”**, consistent with the meaning given in 18 United States Code (U.S.C.) section 1151, means, unless otherwise indicated:

- (1) All land within the exterior boundaries of the Rincon Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation; and
- (2) All Indian allotments or other lands held in trust for the Band or an enrolled member of the Band or otherwise subject to a restriction against alienation imposed by the United States, the Indian titles to which have not been extinguished, including rights of way running through the same.

(s) **“Rincon Band Cigarette Tax”** or **“Band Cigarette Tax”** means the Rincon Band Cigarette Tax imposed pursuant to this Ordinance, which is expressed in cents per cigarette.

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(t) **“Rincon Band Cigarette Retailer”** or **“Band Cigarette Retailer”** means a Cigarette or Tobacco Products retailer wholly owned by the Tribe and located in Rincon Indian Country.

(u) **“Rincon Band Sales Tax”**, or **“Band Sales Tax”** means taxes levied by the Band pursuant to this Agreement and expressed as a percentage of the sales price (which includes the Band Cigarette Tax).

(v) **“Rincon Band Tobacco Products Tax”** means the Rincon Band tax or taxes imposed pursuant to this Ordinance.

(w) **“Roll Your Own Tobacco”** or **“RYO Tobacco”** means roll-your-own tobacco or tobacco that, because of the tobacco’s appearance, type, packaging, or labeling, is suitable for use in making Cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(x) **“Stamp Vendor”** means the entity selected by the Band to hold and distribute Tribal Tax Stamps to Licensed Tribal Manufacturers and Licensed Tribal Distributors.

(y) **“State Cigarette Tax”** means the State excise taxes imposed on each Cigarette, which is expressed in mills per cigarette.

(z) **“State Cigarette Tax Stamp”** or **“State Tax Stamp”** means the stamp required by the State of California to be affixed to Cigarettes by State Licensed Distributors.

(aa) **“State Licensed Cigarette and Tobacco Products Distributor”** means a person licensed by the State of California to Distribute Cigarettes and Tobacco Products.

(bb) **“State Tobacco Products Tax”** means the State tax imposed on Tobacco Products.

(cc) **“Tobacco Products”** includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, Roll Your Own Tobacco, and any other articles or products made of, or containing at least fifty percent (50%), tobacco, but does not include Cigarettes.

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(dd) “**Tribal Tax Stamp**” or “**Stamp**” means the combined Band Cigarette Excise Tax and Band Fee stamp required by this Ordinance.

(ee) “**Tribally Manufactured Cigarettes**” means Cigarettes that a Manufactured by a Licensed Tribal Manufacturer.

(ff) “**Tribally Manufactured Tobacco Products**” means Tobacco Products Manufactured by a Licensed Tribal Manufacturer.

§ 4.423.01 **CIGARETTE AND TOBACCO PRODUCTS TAXES CHAPTER;**
 SCOPE

(a) This Chapter shall apply to all Cigarette and Tobacco Product sales to and by Band Cigarette Retailers identified in Section 4.423.04 of this Ordinance.

(b) This Ordinance shall not apply to Remote Retail Sales, which shall be governed by applicable federal law.

§ 4.423.02 **PROHIBITED ACTIVITIES**

(a) Only Licensed Tribal Distributors or State Licensed Distributors on the Band List, Licensed Tribal Manufacturers on the Band Directory, or the Band when acting as a Manufacturer or Distributor, may distribute Cigarette or Tobacco Products to Band Retailers identified in Section 4.423.03 of this Ordinance.

(b) Any activity in violation of this Section constitutes a civil infraction pursuant to this Ordinance.

(c) Any person or entity that violates this Section is subject to confiscation of all unstamped Cigarettes and all untaxed Tobacco Products, and to a minimum fine equal to the amount of the Band or State Taxes that should have been assessed against such Cigarettes and Tobacco Products.

§ 4.423.03 **BAND CIGARETTE RETAILERS**

(a) The Business Council shall by resolution designate Band Cigarette Retailers.

(b) The Tax Collector shall maintain a List of Approved Band Cigarette Retailers.

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(c) All Band Cigarette Retailers must obtain a Band Business License pursuant to Section 4.404 of this Ordinance.

§ 4.423.04 PURCHASE OF CIGARETTES AND TOBACCO PRODUCTS BY BAND CIGARETTE RETAILERS

(a) Band Cigarette Retailers shall purchase Cigarettes and Tobacco Products only from:

- (1) the Band when acting as a Manufacturer or Distributor;
- (2) Licensed Tribal Distributors or State Licensed Distributors who appear on the Band List; or
- (3) Licensed Tribal Manufacturers who appear on the Band Directory.

(b) All Cigarettes and Tobacco Products purchased by Band Cigarette Retailers from State Licensed Distributors shall comply with applicable California State regulatory and taxation requirements.

(c) Band Cigarette Retailer purchases from Licensed Tribal Manufacturers and Licensed Tribal Distributors shall be limited to Tribally Manufactured Cigarettes and Tobacco Products.

(d) All Cigarettes sold by Band Cigarette Retailers shall bear a Tribal Tax Stamp or a State Tax Stamp.

(e) Cigarettes bearing the Tribal Tax Stamp required by this Ordinance or Cigarettes purchased by the Band for stamping may be delivered or transferred within or outside Rincon Indian Country by a Licensed Tribal Distributor, or a Licensed Tribal Manufacturer to the Band or a Band Retailer, subject to meeting any notification requirements of this Ordinance.

(f) Cigarettes bearing the State Tax Stamp required by this Ordinance may be delivered or transferred within or outside Rincon Indian Country by a State Licensed Distributor, subject to meeting any notification requirements of this Ordinance.

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(g) Tobacco Products for which the Rincon Tribal Tobacco Products Tax has been pre-collected may be delivered or transferred within or outside of Rincon Indian Country by a Licensed Tribal Distributor or a Licensed Tribal Manufacturer to the Band or a Band Retailer, subject to meeting any notification requirements of this Ordinance.

(h) Tobacco Products purchased by Band Retailers from State Licensed Distributors for which the State Tobacco Products Tax has been pre-collected by may be delivered or transferred within or outside of Rincon Indian Country by a State Licensed Distributor to the Band or a Band Retailer, subject to meeting any notification requirements of California State Law or of this Ordinance.

(i) Commercial carriers may make deliveries of Cigarettes or Tobacco Products to the Band or Band Retailers.

(j) An invoice and/or bill of lading that identifies the shipment as destined for the Rincon Indian Reservation and that further identifies the purchasing Band Retailer must accompany each delivery of Cigarettes or Tobacco Products.

(1) The Tax Collector shall be provided with a separate copy of each such invoice and/or bill of lading.

(k) All shipments of Cigarettes or Tobacco Products destined for Rincon Indian Country shall comply with all applicable reporting requirements imposed by federal law.

(l) Band Cigarette Retailers shall notify the Tax Collector of all Cigarette and Tobacco Products shipments no less than five (5) days in advance of all shipments.

(1) Such notice shall include the name of the Licensed Tribal Distributor, Licensed Tribal Manufacturer or State Licensed Distributor, detail regarding both quantity and brand, and the invoice order number.

§ 4.423.05 SALES TO MINORS PROHIBITED

(a) No person shall sell or give, or permit to be sold or given, Cigarettes or Tobacco Products to any person under the age of eighteen (18).

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(1) This subsection shall not apply to tobacco given to a minor, with parental consent, in furtherance of bona fide religious practices.

(b) In addition to potential federal law violations, violation of Subsection 4.423.05 (a) is a civil infraction, subject to the following penalties:

(1) Upon a first (1st) violation a fine of two-hundred and fifty dollars (\$250);

(2) Upon a second (2nd) violation within any rolling one (1) year period, a fine of five-hundred dollars (\$500);

(3) Upon a third (3rd) violation within any rolling one (1) year period, a fine of seven-hundred and fifty dollars (\$750);

(4) Upon a fourth (4th) violation within any rolling two (2) year period, a fine of one-thousand dollars (\$1,000); and

(5) Upon a fifth (5th) violation within any rolling two (2) year period, a fine of one-thousand dollars (\$1,000), and termination from employment.

(c) It shall not be defense for a violation of Subsection 4.423.05(a) that the purchaser acted, or was believed by the defendant to act, as agent or representative of another.

(d) It shall be a defense to a violation of Subsection 4.423.05(a) that the person making a sale reasonably relied on officially issued identification that shows the purchaser's age and bears the purchaser's signature and photograph.

§ 4.423.06 BAND CIGARETTE TAX LEVY

Beginning no later than the first (1st) date of the sale of Cigarettes by Band Cigarette Retailers after the effective date of this Ordinance, taxes are hereby imposed, pursuant to the terms of this Chapter, on all sales of Tribally Manufactured Cigarettes to all persons by Band Cigarette Retailers.

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§ 4.423.07 **BAND CIGARETTE TAX RATE**

(a) A tax to be known as the Band Cigarette Tax is hereby imposed upon the purchase by of Tribally Manufactured Cigarettes from Band Cigarette Retailers.

(b) The amount of the Band Cigarette Tax shall be equal to 100% of the amount of the State Cigarette Tax.

(c) The incidence of the Band Cigarette Tax is on the consumer.

§ 4.423.08 **PRE-COLLECTION OF BAND CIGARETTE TAX; INCLUSION IN SALES PRICE**

(a) The Stamp Vendor shall pre-collect the Band Cigarette Tax pursuant to this Ordinance.

(b) The Band Cigarette Tax shall be included in the selling price to Band Cigarette Retailers and shall be included in the consumer purchase price.

§ 4.423.09 **CIGARETTES MANUFACTURED BY THE BAND OR A BAND ENTERPRISE WITHIN INDIAN COUNTRY**

All Cigarettes manufactured by the Band, or an enterprise in which the Band holds an ownership interest, within Indian country over which the Band or an entity in which the Band holds an ownership interest exercises tribal governmental jurisdiction, that also are sold within Rincon Indian Country, shall be exempt from the Band Cigarette Tax.

§ 4.423.10 **BAND TOBACCO PRODUCTS TAX**

(a) A tax to be known as the Band Tobacco Products Tax is hereby imposed upon the purchase of Tribally Manufactured Tobacco Products from Band Cigarette Retailers.

(b) The amount of the Band Tobacco Products Tax shall be equal to 100% of the amount of the State Tobacco Products Tax.

(c) The incidence of the Band Tobacco Products Tax is on the consumer.

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§ 4.423.11 PRE-COLLECTION OF THE BAND TOBACCO PRODUCTS TAX

(a) Licensed Tribal Distributors and Licensed Tribal Manufacturers shall pre-collect the Band Tobacco Products Tax from the Band Retailer and shall file monthly returns with the Tax Collector as required by this Ordinance.

(b) All pre-collected Band Tobacco Products Taxes shall be included in the selling price to Band Cigarette Retailers and shall be included in the consumer purchase price.

§ 4.423.12 RINCON SALES TAX

(a) The Band Sales Tax shall be imposed upon the consumer purchase of Cigarettes and Tobacco Products from Band Cigarette Retailers pursuant to Section 4.414 of this Ordinance.

(b) The incidence of the Band Sales Tax is on the consumer.

(c) Band Retailers shall collect the Band Sales Tax for all such sales and will file monthly returns with the Tax Collector as required by this Ordinance.

§ 4.423.13 TRIBAL TAX STAMPS REQUIRED ON ALL TRIBALLY MANUFACTURED CIGARETTES

All Tribally Manufactured Cigarettes sold by Tribal Retailers shall bear a Tribal Tax Stamp.

§ 4.423.14 CREATION AND SUPPLY OF CIGARETTE TAX STAMPS

(a) The Tax Collector shall arrange for the creation and supply of a Tribal Tax Stamp by a nationally recognized stamp manufacturer.

(b) Tribal Tax Stamps shall bear a serial number or some other discrete identification so that stamps may be traced to the Licensed Tribal Distributor or Licensed Tribal Manufacturer who affixed the Tribal Tax Stamps to the packs.

§ 4.423.15 STAMP VENDOR

(a) The Tax Collector may contract with a bank or other stamp vendor to distribute Tribal Tax Stamps, subject to the conditions set forth in this section.

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(b) The Stamp Vendor shall distribute Tribal Tax Stamps to Licensed Tribal Distributors and Licensed Tribal Manufacturers, upon prepayment of the applicable Band Taxes by the Licensed Tribal Distributor or Licensed Tribal Manufacturer, and remit the collected taxes to the Band.

(c) The Stamp Vendor shall purchase a supply of Tribal Tax Stamps from the stamp manufacturer and make them available for purchase.

(d) The Stamp Vendor shall remit to the Tax Collector all revenue collected from Band Cigarette Taxes.

(e) The Stamp Vendor shall provide to the Tax Collector timely reports detailing the number of Tribal Tax Stamps, and make its records available for auditing by the Band.

(f) The Stamp Vendor shall be subject to a process by which the Tax Collector is assured that all Licensed Tribal Distributors and Licensed Tribal Manufacturers who sell Cigarettes to Band Retailers are paying the applicable Band Taxes.

(g) Licensed Tribal Distributors and Licensed Tribal Manufacturers must agree to provide documentation such as invoices of sales to verify to the Tax Collector that the Band Taxes were paid.

(h) In the alternative, the Tax Collector may elect to act as the Stamp Vendor, in which case the Tax Collector shall ensure appropriate protocols are in place regarding security and audit.

§ 4.423.16 PRE-COLLECTION OF THE BAND CIGARETTE TAX AND TOBACCO PRODUCTS TAXES; INCLUSION IN SALES PRICE

(a) Whenever Band Cigarette Taxes or Band Tobacco Products Taxes are paid by any person other than the consumer, user, or possessor, that payment shall be considered a pre-collection of such taxes due.

(b) When Band Cigarette Taxes or Band Tobacco Products Taxes are prepaid by another, this amount is part of the selling price of the Cigarettes or Tobacco Products to the retail purchaser and shall be passed on by the retail purchaser to the consumer.

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§ 4.423.17 TRIBAL STAMP AFFIXATION REQUIREMENTS

(a) Licensed Tribal Distributors and Licensed Tribal Manufacturers or the Band shall be responsible for affixing Tribal Tax Stamps to packs of Tribally Manufactured Cigarettes that will be sold to Band Cigarette Retailers.

(b) Tribal Tax Stamps shall be affixed so that the Tribal Tax Stamp may not be removed from the package without destroying the Tribal Tax Stamp.

(c) Tribal Tax Stamps shall be affixed so that they may be readily viewed by inspection.

(d) Licensed Tribal Distributors and Licensed Tribal Manufacturers may only possess unstamped Tribally Manufactured Cigarettes destined for delivery to a Band Cigarette Retailer for as long as is reasonably necessary to affix Tribal Tax Stamps to the packages for sale or to ship to Band Retailers.

§ 4.423.18 SALE OF UNSTAMPED CIGARETTES PROHIBITED

(a) All Cigarettes sold or intended for sale by Band Cigarette Retailers shall bear the State Tax Stamp or Tribal Tax Stamp in the manner required by this Ordinance.

(b) Any person who possesses unstamped Cigarettes in violation of this Ordinance with the intent to sell such Cigarettes, shall be guilty of an infraction and shall be subject to the following penalties:

- (1) A fine equal to the amount of the Cigarette Taxes that should have been assessed against such Cigarettes;
- (2) Forfeiture of all unstamped Cigarettes; and
- (3) If applicable, revocation of any license issued pursuant to this Ordinance for a minimum of three (3) years.

§ 4.423.19 LIST OF APPROVED DISTRIBUTORS

(a) The Tax Collector shall maintain a List of Approved Distributors, which shall include State Licensed Distributors and Licensed Tribal Distributors who meet

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the requirements of this Chapter for selling Cigarettes and Tobacco Products to Band Retailers (“Band List”).

(b) Within ten (10) days of the inclusion of a State Licensed Distributor or a Licensed Tribal Distributor on the Band List, the Tax Collector shall promptly inform Band Retailers.

(c) Within ten (10) days of the removal of a State Licensed Distributor or a Licensed Tribal Distributor from the Band List, the Tax Collector shall promptly inform Band Retailers.

§ 4.423.20 LICENSED TRIBAL DISTRIBUTORS

(a) Tribally-owned or Indian-owned Distributors who are not required as matter of federal law to be licensed by any state, but who have agreed to comply with the terms of this Ordinance, may be licensed by the Tax Collector as a Licensed Tribal Distributor.

(1) The Tax Collector shall include Licensed Tribal Distributors on the Band List.

(b) Compliance with this Ordinance is a rolling requirement for licensure and for inclusion on the Band List.

(c) Licensed Tribal Distributors shall ensure that invoices detailing the quantity and brand of Cigarettes and/or Tobacco Products destined for Rincon Indian Country will accompany the Cigarettes and/or Tobacco Products transported through the State.

(d) Invoices required by this Section shall provide an order number that matches the order number provided pursuant to the audit requirements of this Ordinance and shall identify the seller of the Cigarettes and/or Tobacco Products as well as the buyer.

(e) Licensed Tribal Distributors shall provide copies of invoices required by this Section to the Tax Collector.

(f) The Licensed Tribal Distributor will allow the Auditor access to its records pertaining to any sales within Rincon Indian Country for the purpose of determining whether the Tribal Tax Stamps are properly affixed to the Cigarette packs and whether the Band Taxes were paid to the Band.

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- (g) To maintain good standing, a Licensed Tribal Distributor must:
- (1) Meet the definition of “Licensed Tribal Distributor”
 - (2) Timely pay all applicable Band Taxes;
 - (3) Be listed on the Tax Collector’s List of Approved Distributors;
and
 - (4) Be in compliance with this Ordinance.

§ 4.423.21 BAND AS DISTRIBUTOR

The Band may act as a Distributor.

§ 4.423.22 DIRECTORY OF LICENSED TRIBAL MANUFACTURERS

(a) The Tax Collector shall maintain a directory of the brand families of each Licensed Tribal Manufacturers in good standing (“Band Directory”).

(b) Within ten (10) days of the inclusion of a Licensed Tribal Manufacturer on the Band Directory, the Tax Collector shall promptly inform the Business Council, Licensed Tribal Distributors, and Band Cigarette Retailers.

(c) Within ten (10) days of the removal of a Licensed Tribal Manufacturer from the Band Directory, the Tax Collector will promptly inform the Business Council, Licensed Tribal Distributors, and Band Cigarette Retailers.

(d) State directory and qualifying escrow payment requirements shall not apply to Licensed Tribal Manufacturer Cigarettes and RYO Tobacco sold within Rincon Indian Country upon which Band Taxes have been paid pursuant to this Ordinance.

§ 4.423.23 LICENSED TRIBAL MANUFACTURERS

(a) Licensed Tribal Manufacturers must certify to the Tax Collector that they will meet the terms of this Ordinance.

(b) Compliance with this Ordinance is a rolling requirement for licensure and for listing on the Tribal Directory.

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(c) Licensed Tribal Manufacturers shall ensure that invoices detailing the quantity and brand of Cigarettes and/or Tobacco Products destined for Rincon Indian Country will accompany the Cigarettes and/or Tobacco Products transported through the State.

(d) Invoices required by this Section shall provide an order number that matches the order number provided pursuant to the audit requirements of this Ordinance and shall identify the seller of the Cigarettes and/or Tobacco Products as well as the buyer; and

(e) Licensed Tribal Manufactures shall provide copies of invoices required by this Section to the Tax Collector.

(f) To maintain good standing, a Licensed Tribal Manufacturer must:

- (1) Meet the definition of “Licensed Tribal Manufacturer”
- (2) Timely make all Band Tax payments;
- (3) Be listed on the Band’s Directory of Licensed Tribal Manufacturers; and
- (4) Be in compliance with this Ordinance.

§ 4.423.24 STAMP VENDOR RECORD KEEPING REQUIREMENTS

(a) The Stamp Vendor shall maintain records and invoices of stamps purchased from the stamp manufacturer, and records and invoices of sales of stamps to Licensed Tribal Distributors and Licensed Tribal Manufacturers.

(b) All records required to be maintained by the Stamp Vendor shall be made available for inspection and duplication by the Tax Collector pursuant to this Ordinance.

§ 4.423.25 BAND RETAILER RECORD KEEPING REQUIREMENTS

(a) Band Retailers shall maintain records and invoices of Cigarettes and Tobacco Products purchased; records and invoices of Cigarettes and Tobacco Products

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sold; Cigarette and Tobacco Products inventory; and records to verify that the retail selling price included the applicable Band Taxes.

(b) All records required to be maintained by Band Retailers shall be made available for inspection and duplication by the Tax Collector pursuant to this Ordinance.

§ 4.423.26 **BAND RECORD KEEPING REQUIRMENTS**

(a) The Band shall maintain records necessary to verify that all Band Tax revenue was used to fund essential government services of the Band.

(b) All records required to be maintained by the Band shall be made available for inspection and duplication by the Tax Collector pursuant to this Ordinance.

§ 4.423.27 **LICENSED TRIBAL DISTRIBUTOR RECORD KEEPING REQUIREMENTS**

(a) Licensed Tribal Distributors shall maintain records and invoices of Tribal Tax Stamp purchases, records and invoices of sales of Tribal Tax Stamped Cigarettes, Tribal Tax Stamp inventory, and the stamping process.

(b) Licensed Tribal Distributors shall maintain records and invoices of Tobacco Products sales and payment of Band Tobacco Products Tax.

(c) All records required to be maintained by Licensed Tribal Distributors shall be made available for inspection and duplication by the Tax Collector pursuant to this Ordinance.

§ 4.423.28 **STATE LICENSED DISTRIBUTOR RECORD KEEPING REQUIREMENTS**

(a) State Licensed Distributors shall maintain records and invoices of sales of Cigarettes to Band Retailers and payment of applicable State Cigarette Taxes.

(b) State Licensed Distributors shall maintain records and invoices of Tobacco Products sales to Band Retailers and payment of applicable State Tobacco Products Taxes.

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(c) All records required to be maintained by State Licensed Distributors shall be made available for inspection and duplication by the Tax Collector pursuant to this Ordinance.

§ 4.423.29 LICENSED TRIBAL MANUFACTURERS RECORD KEEPING REQUIREMENTS

(a) Licensed Tribal Manufacturers shall maintain records and invoices of Stamp purchases, records and invoices of sales of stamped Cigarettes, Stamp inventory, and the stamping process.

(b) Licensed Tribal Manufacturers shall maintain records and invoices of Tobacco Products sales and payment of Band Tobacco Products Tax.

(c) All records required to be maintained by Licensed Tribal Manufacturers shall be made available for inspection and duplication by the Tax Collector pursuant to this Ordinance.

§ 4.423.30 CIGARETTE AND TOBACCO PRODUCTS TAX: USE OF BAND LEVY

Band Cigarette Tax and Band Tobacco Products Tax revenue shall be used only for Essential Government Services.

§ 4.423.31 AUDITS

(a) The Tax Collector may retain an independent third party Auditor or, alternatively, may use its own internal Auditor to verify its compliance with this Ordinance.

(b) The Auditor shall be a certified public accountant licensed in any state.

(c) The Auditor shall perform all work required under this Ordinance.

(d) The Auditor will review records on an annual basis, consistent with the Band's fiscal year, to verify compliance the requirements of this Chapter, unless otherwise specified.

(e) The Auditor must complete the audits using the standards and procedures set forth in this Chapter.

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(f) The method used by the Auditor and/or the Auditor's results must be made available upon request of the Business Council for inspection.

§ 4.423.32 **AUDIT PROTOCOL**

(a) Period under review:

- (1) To verify the requirements of this Ordinance, the Auditor must review records for all years during the current appropriate audit cycle, and may review records for earlier years only as necessary for an internal reconciliation of the entity's books.
- (2) In situations where the Auditor is responsible for verifying records on less than an annual basis, the period under review shall not include years previously reviewed by the Auditor, except when a violation is alleged to have occurred during the period previously reviewed.

(b) Records to be examined:

- (1) To verify the requirements of this Ordinance, the Auditor must review at a minimum the records specified in this subsection.
- (2) The Auditor is not responsible for examining records that do not relate to the stamping, selling, taxing or fee activities of the Band, unless a review of the records is necessary for an internal reconciliation of the book.
- (3) Licensed Tribal Distributors' records and invoices of Stamp purchases, records and invoices of sales of Cigarettes Tobacco Products into Rincon Indian Country, Stamp inventory, and the stamping process;
- (4) State Licensed Distributors' records and invoices of sales of Cigarettes and Tobacco Products into Rincon Indian Country, records evidencing payment of applicable State taxes and fees;
- (5) Band Cigarette Retailers' records and invoices of Cigarettes and Tobacco Products purchased from Licensed Tribal

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Distributors and Licensed Tribal Manufacturers, records and invoices of Cigarettes and Tobacco Products sold, Cigarette inventory, and additional records necessary to verify whether Band Cigarette, Band Tobacco Products Tax revenue was used in accordance with the requirements of this Ordinance, and to verify that the retail selling price included the applicable Band Taxes;

- (6) Licensed Tribal Manufacturers' records and invoices of Stamp purchases, records and invoices of sales of Cigarettes and Tobacco Products sold into Rincon Indian Country, Stamp inventory, and the stamping process;
- (7) Stamp Vendors' records of Stamp inventory, records of Stamp purchases and sales, invoices provided by the Band, Licensed Tribal Distributors and Licensed Tribal Manufacturers pursuant to this Ordinance; and
- (8) Bands' records necessary to verify that all Band Cigarette Tax and Band Tobacco Products Tax revenues were used in accordance with the terms of this Ordinance.

(c) First Annual Audit.

- (1) The first required Audit shall cover the period starting on the effective date of this Ordinance and ending on December 31st of that calendar year, and the Auditor must report its findings to the Tribe by April 1st of the subsequent calendar year.
- (2) Thereafter, Audits shall take place during the regular audit period, which follows the Band's fiscal year, with an audit report submitted within three (3) months of each audit.

(d) The Auditor shall provide the Tax Collector and the Business Council with a certified statement that, after each audit, the Auditor finds Band Retailers to be in compliance with the terms of this Ordinance.

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§ 4.423.33 LICENSED TRIBAL DISTRIBUTORS

(a) The Auditor will be responsible for reviewing the records, identified in Section 4.423.33(b) of all Licensed Tribal Distributors that sell Cigarettes and Tobacco Products to Band Cigarette Retailers to verify that applicable Band Taxes were paid and that stamps were affixed pursuant to this Ordinance.

(b) The Auditor must review the records identified in Section 4.423.32(b) of all Licensed Tribal Distributors that sell Cigarettes or Tobacco Products to Band Cigarette Retailers no less than once every four years.

(c) If a Licensed Tribal Distributor who previously sold Cigarettes or Tobacco Products to a Band Cigarette Retailer stops making such sales, the Auditor must review the records of that Licensed Tribal Distributor during the next regularly scheduled annual audit.

§ 4.423.34 STATE LICENSED DISTRIBUTORS

(a) The Auditor will be responsible for reviewing the records, identified in Section 4.423.33(b) of all State Licensed Distributors that sell Cigarettes and Tobacco Products to Band Cigarette Retailers to verify compliance with this Ordinance.

(b) The Auditor must review the records identified in Section 4.423.33(b) of all State Licensed Distributors that sell Cigarettes or Tobacco Products to Band Cigarette Retailers no less than once every four years.

(c) If a State Licensed Distributor who previously sold Cigarettes or Tobacco Products to a Band Cigarette Retailer stops making such sales, the Auditor must review the records of that State Licensed Distributor during the next regularly scheduled annual audit.

§ 4.423.35 LICENSED TRIBAL MANUFACTURERS

(a) The Auditor will be responsible for reviewing the records, identified in Section 4.423.33(b), of all Licensed Tribal Manufacturers who sell Cigarettes or Tobacco Products to Band Cigarette Retailers to verify that applicable Band Taxes and were paid and that stamps were affixed pursuant to this Ordinance.

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(b) The Auditor must review the records identified in Section 4.423.33(b) of all Licensed Tribal Manufacturers that sell Cigarettes or Tobacco Products into the Band’s Indian Country no less than once every four years.

(c) If a Licensed Tribal Manufacturer who previously sold Cigarettes or Tobacco Products to Band Cigarette Retailers stops making such sales, the Auditor must review the records of the Licensed Tribal Manufacturer during the next regularly scheduled annual audit.

§ 4.423.36 **TRIBAL RETAILERS**

The Auditor will be responsible for reviewing the records, identified in Section 4.423.33(b), of Band Retailers to certify that Band Taxes were collected, that all Cigarettes are properly stamped, and that Cigarettes and Tobacco Products were obtained from Licensed Tribal Distributors, State Licensed Distributors or Licensed Tribal Manufacturers pursuant to this Ordinance.

§ 4.423.37 **STAMP VENDOR**

(a) The Auditor will be responsible for reviewing the records, identified in Section 4.423.33(b), of the Stamp Vendor to verify that applicable Band Taxes were paid to the Stamp Vender and properly distributed by the Stamp Vendor pursuant to this Ordinance.

(b) The Auditor must review the records of the Stamp Vendor as identified in Section 4.423.33(b) no less than once every four years.

(c) If an entity that previously acted as the Stamp Vendor stops serving in that capacity, the Auditor must review the records of such entity during the next regularly scheduled annual audit.

§ 4.423.38 **POWERS OF THE TAX COLLECTOR**

(a) The Tax Collector shall have the following powers:

(1) To promulgate and enforce such written rules and regulations as are necessary to carry out the orderly performance of his duties under this Chapter.

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- (2) To make, or cause to be made, 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 location where Cigarettes or Tobacco Products sales are occurring, during normal business hours or at any time whatsoever pursuant to a search warrant issued by the Rincon Tribal Court.
- (3) To assess fines and penalties and to issue cease and desist orders.
- (4) To assess and collect Band Cigarette and Tobacco Product Taxes pursuant to this Ordinance.
- (5) To exercise all other authority as may be reasonably necessary in the administration or enforcement of this Ordinance.

§ 4.423.39 INSPECTIONS

(a) Tax Collector agents, upon presentation of appropriate credentials, reasonably may inspect and investigate locations within Rincon Indian Country upon which Cigarette and Tobacco Product operations are occurring to determine whether:

- (1) Persons engaged in activities regulated under this Ordinance are properly licensed;
- (2) Cigarette and Tobacco Products sales are conducted pursuant to the requirements of this Ordinance;
- (3) Cigarettes properly are stamped pursuant to the requirements of this Ordinance; and
- (4) Records properly are being maintained pursuant to requirements of this Ordinance.

§ 4.423.40 BAND CIGARETTE RETAILERS; CEASE AND DESIST ORDERS

(a) If the Tax Collector determines that a Band Retailer has failed to comply with any provision of this Ordinance or any provision of Rincon Tribal Law, and such noncompliance poses a direct and immediate threat to the peace, safety, morals, or

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general welfare of persons residing upon Rincon Indian Country, or constitutes a willful violation of this Ordinance, the Tax Collector shall issue an order commanding the Band Retailer immediately to cease and desist any and all Cigarette and Tobacco Products sales.

(b) Any employee of a Band Retailer who is served by the Tax Collector with a cease and desist order is deemed to be an agent of thereof, and issuance of the cease and desist order to the employee is notice to the employer.

(c) If the Tax Collector personally serves upon an employee a cease and desist order, the Tax Collector, within four (4) working days, shall send a copy of the cease and desist order, by certified mail, to the employer.

(d) The employer shall cease and desist Cigarette and Tobacco Products operations immediately upon service of the cease and desist order.

(e) Within fifteen (15) days of the issuance of the cease and desist order, the employer may request, in writing, an expedited appeal hearing before the Rincon Tribal Court, which hearing shall be held no later than forty-eight (48) hours, excluding weekends and holidays, from the time of submission of the Notice of Appeal and Request for Expedited Hearing to the Tribal Court.

(f) The filing of a Notice of Appeal and Request for an Expedited Hearing shall not stay the effect of the Cease and Desist Order.

(g) Cease and desist orders shall be adjudicated as Notices of Infraction pursuant to this Ordinance.

(h) If the Tax Collector reasonably determines that a person is selling Cigarettes or Tobacco Products without a License, the Director shall issue a cease and desist order pursuant to this Ordinance.

§ 4.423.41 INFRACTIONS

(a) Any violation of this Chapter shall constitute a civil infraction.

(b) A Tax Collector agent may issue a Notice of Infraction if there is probable cause to believe that a person has committed an infraction under this Chapter.

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§ 4.423.42 SOVEREIGN IMMUNITY; BAND CIGARETTE RETAILER EMPLOYEES

(a) All Band Cigarette Retailers shall act in conformity with the requirements of this Chapter.

(b) Any person employed by the Band to work for or manage a Band Retailer is directed to comply with the requirements of this Chapter.

(c) Any person employed by the Band to work for or manage a Band Retail Establishment who does not comply with the requirements of this Ordinance hereby is determined to not be acting within his official capacity or within the scope of his authority.

(1) The Sovereign Immunity of the Band shall not extend to a person employed by the Band to work for or manage a Band Retail Establishment when such person does not act within his official capacity or within the scope of his authority.

(2) The Tax Collector is authorized to issue a notice of infraction to any person employed by the Band to work for or manage a Band Retail Establishment who violates any provision of this Ordinance.

(d) With the limited exception specifically set forth in this Section, nothing in this Ordinance shall in any way act to waive the Band's sovereign immunity.

§ 4.423.43 INFRACTIONS; ISSUANCE

(a) A Tax Collector agent shall serve a Notice of Infraction issued under this Chapter:

(1) By personal service upon the person who has committed the infraction; or

(2) By certified mail directed to the person who has committed the infraction.

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(b) If a Tax Collector agent personally serves a Notice of Infraction upon an employee, the agent, within fourteen (14) days, shall send a copy of the Notice of Infraction by certified mail to the Manager of the Band Retailer.

§ 4.423.44 INFRACTIONS; FORM

(a) The form of a Notice of Infraction issued under this Chapter shall include the following:

- (1) A statement that the Notice represents a determination that the person has committed an infraction named in the notice, and that the determination shall be final unless contested as provided in this Chapter;
- (2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;
- (3) A statement of the specific violation that necessitated issuance of the infraction;
- (4) A statement of the penalty involved if the infraction is established;
- (5) A statement of the options provided in this Ordinance for responding to the Notice and the procedures necessary to exercise those options;
- (6) A statement that, at any hearing to contest the Notice of Infraction, the Tax Collector has the burden of proving, by a preponderance of the evidence, that the person committed the infraction;
- (7) A statement notifying the person that they may subpoena witnesses, including the agent;
- (8) A statement that the person who the Tax Collector agent has served with the Notice of Infraction shall sign, that the person promises to respond to the Notice of Infraction in one (1) of the ways provided in this Ordinance;

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- (9) A statement that refusal to sign the infraction, as directed in Subsection does not affect the validity of the infraction nor deprive the Rincon Tribal Court of personal and subject matter jurisdiction to adjudicate the infraction; and
- (10) A statement that a licensee's failure to respond to a Notice of Infraction shall result in a determination that the infraction was committed and shall result in the assessment of the penalty set forth in the infraction.

(b) Unless contested in accordance with this Ordinance, the Notice of Infraction represents a determination that the infraction was committed.

§ 4.423.45 RESPONSE TO NOTICE OF INFRACTION

(a) A person who is issued a Notice of Infraction shall respond within twenty (20) days of the date of issuance of the Notice of Infraction.

(b) If the person named in the Notice of Infraction does not elect to contest the Notice of Infraction, the licensee shall pay to the Rincon Band, by check or money order, the amount of the penalty prescribed for the infraction.

(c) If the Tax Collector receives a response that does not contest the Notice of Infraction, but that includes payment of the appropriate penalty, the Tax Collector shall make the appropriate entry in the records and close the matter.

(d) If the person named in the Notice of Infraction elects to contest the Notice of Infraction, the person shall file a Notice of Appeal to the Rincon Tribal Court specifying the grounds for the appeal.

(e) If any person issued a Notice of Infraction fails to respond within twenty (20) days of the issuance of the infraction, the person shall be deemed to have admitted to committing the infraction and shall be liable for the penalty set forth in the Notice of Infraction.

§ 4.423.46 APPEAL PROCEDURE

(a) A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

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(b) The Court may consider the Notice of Infraction and any other written report made under oath and submitted by the Tax Collector that was the basis for the issuance of the notice, in lieu of the witness' personal appearance at the hearing.

(c) An attorney may represent the Tax Collector.

(d) The person may subpoena witnesses, including Tax Collector agents, and has the right to present evidence and examine witnesses present in Court.

(e) The burden of proof is upon the Tax Collector to establish the infraction by a preponderance of the evidence.

(f) After consideration of the evidence and argument, the Court shall determine whether the person committed the infraction.

(g) Where it is not established that the infraction was committed, the Court shall issue an order dismissing the Notice.

(h) Where it is established that the person committed an infraction, the Court shall issue an appropriate order.

(1) The final order shall include findings showing that:

(A) The Tribal Court has jurisdiction over the subject matter and the parties; and

(B) The judgment was consistent with Rincon Tribal Law.

(i) A decision by the Tribal Court on the appeal shall be final and unreviewable.

(1) If, after final determination by the Rincon Tribal Court that a person has committed the infraction, the person fails to pay a monetary penalty within thirty (30) days, the person shall be subject to contempt of court.

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§ 4.423.47 **INFRACTION PENALTY**

(a) For all violations of this Title for which a specific penalty is not established, the Tax Collector shall assess a monetary penalty of five-hundred dollars (\$500) upon a person found to have committed an infraction under this Title.

(b) The Tax Collector shall deposit monetary penalties collected under this Title in the Band’s general fund.

§ 4.423.48 **PROHIBITION AGAINST RESALE**

(a) Consumers shall not purchase for resale any Cigarettes or Tobacco Products sold by Tribal Cigarette Retailers.

(b) Tribal Cigarette Retailers shall post a notice advising that Cigarettes and Tobacco Products may not be purchased for resale.

(c) Any person who violates, or conspires to violate, this Section shall be guilty of an infraction punishable by a fine not to exceed one-thousand dollars (\$1,000) for each violation and confiscation of all Cigarettes or Tobacco Products purchased for resale.

MOTOR VEHICLE FUEL TAX

§ 4.424.00 **DEFINITIONS**

(a) “Fuel” means gasoline, diesel, or biodiesel delivered to any Retailer.

(b) “Fuel station” means a retail place of business operated for the purpose of selling and delivering to the general public motor vehicle fuel into the fuel tanks of motor vehicles.

(c) “Motor vehicle fuel” means and includes all fuels for use in a motor vehicle, including gasoline and diesel products.

(d) “Tribal fuel tax” means any tax imposed by the Tribe on fuel delivered within the Reservation.

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§ 4.424.01 FUEL TAX IMPOSITION & RATE

A Tribal fuel tax is hereby imposed on any Retailer receiving motor vehicle fuel on the Reservation. Due to the ongoing COVID-19 pandemic, effective May 22, 2021, the tax rate on all fuels is temporarily reduced for the duration of the pandemic by fifty (50%) percent: from forty-seven and three-tenths cents (\$0.473) to twenty-three and sixty-five tenths (\$0.2365) of the cost per gallon of fuel delivered on the Reservation.

RINCON				
Gas & Diesel Excise Tax				
	<u>Reg-87</u>	<u>Plus</u>	<u>Prem-91</u>	<u>Diesel</u>
	0.236500	0.236500	0.236500	0.236500
TOTAL	0.236500	0.236500	0.236500	0.236500

§ 4.424.02 METHOD OF COLLECTION

The tax hereby imposed shall be paid by the Retailer at the time of the delivery of the fuel. The amount of the fuel tax collected shall be separately stated on all documentation pertaining to the delivery of motor vehicle fuel collected by the Retailer. The Retailer shall remit the tax collected on or before the twentieth (20th) of the month along with a statement of all motor vehicle fuel delivered to the Retailer during the preceding month.

§ 4.424.03 TAX AS DEBT TO THE TRIBE

The tax collected by the Retailer constitutes a debt owed by the Retailer to the Tribe.

§ 4.424.04 EXEMPTIONS

There are no fuel tax exemptions.

§ 4.425 (RESERVED FOR CONTRACTOR GROSS RECEIPTS)

§ 4.426 (RESERVED FOR LUXURY TAX)

§ 4.427 (RESERVED FOR PRIVILEGE TAX)

§ 4.428 (RESERVED FOR PROPERTY TAX)

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Rincon Tribal Code § 4.400**UTILITY TAX****§ 4.429.00 IMPOSITION AND RATE**

(a) A tax is hereby imposed on the gross receipts of a Utility Owner and Utility companies that is equal to the sum of three percent (3%) from the operation of Utility Property that generates revenue paid by customers with points of service within the exterior boundaries of the Rincon Reservation. The tax imposed by this Chapter shall be levied on the Utility Owner and Utility companies and shall not be billed and charged to customers.

RINCON UTILITY TAX RATES

Electricity	Gas	Telephone	Internet
3%	3%	3%	3%

§ 4.429.01 METHOD OF COLLECTION & PAYMENT OF TAX

(a) The tax hereby imposed shall be paid each year in United States dollars by the Utility Owner and Utility companies on the previous year's gross receipts from the operation of Utility Property that generates revenue paid by customers with points of service within the exterior boundaries of the Reservation. The Tax Collector shall, by December 10th of each year, mail to each Utility Owner and Utility companies a notice of Utility Tax due based on the previous six months of gross receipts received by the Utility Owner and Utility companies. The notice shall be mailed to the address specified in the most recent declaration filed pursuant to this Chapter, or, if no declaration has been filed, to the owner's last known address. Failure to send or receive notice shall not relieve the Utility Owner and Utility companies of the obligation to timely pay the Utility Tax due.

(b) The tax due shall be paid in two, equal semi-annual installments, with one-half (1/2) being due by January 15th, and one-half (1/2) being due July 15th. If the tax due is less than two hundred and fifty dollars (\$250.00), the tax shall be paid in one annual installment being due July 15th. The Utility Tax shall be paid by check made payable to the Tax Collector and mailed or delivered to the Tax Collector of the Rincon Band of Luiseño Indians. Payment is timely if postmarked or actually delivered on or prior to the due date.

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§ 4.429.02 TAX AS DEBT TO THE TRIBE

The tax required to be paid by a Utility Owner and Utility companies constitutes a debt owed by the Utility Owner and Utility companies to the Tribe.

§ 4.429.03 PRESUMPTION THAT ALL GROSS RECEIPTS ARE TAXABLE

For the purpose of the proper administration of Section 4.429.00 and to prevent evasion of the Utility Tax, it is presumed that all gross receipts of the Utility Owner and Utility companies are subject to tax until the contrary is established.

§ 4.429.04 EXEMPTIONS FROM UTILITY TAX

- (a) The tax imposed by this Chapter shall not apply to:
 - (1) The Tribe, any arm, any subdivision, agency or program of the Tribe or any enterprise, corporation, limited liability company or entity owned by the Tribe, except to the extent such taxes are authorized by Tribal law;
 - (2) The United States or its subdivisions, agencies or departments except to the extent such taxes are authorized by federal law, or
 - (3) The State of California or its subdivisions, agencies or departments except to the extent such taxes are authorized by state law.

(b) If a Utility Owner or Utility companies are owned in part by entities exempt and in part by entities not exempt, only the proportionate share owned by nonexempt entities shall be subject to tax.

§ 4.429.05 PENALTIES AND INTEREST FOR LATE PAYMENT OF UTILITY TAX

(a) A penalty of five percent (5%) shall be charged on any Utility Taxes Returns not paid when due, and interest at three percent (3%) per month compounded daily

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shall be charged on the unpaid balance from the Utility Tax payment and penalty due date until the date of payment.

(b) Any person failing to pay Utility Taxes when due shall also be liable for a penalty equal to any extraordinary administrative costs, including attorney's fees and other litigation costs, incurred in collecting the unpaid amount. Interest at two percent (2%) per month compounded daily shall also be assessed against any unpaid administrative costs, attorney's fees or any other litigation costs associated with collection of taxes due.

(c) The penalties and interest shall be assessed and collected as a Tax imposed pursuant to this Ordinance.

§ 4.429.06 COLLECTION OF ASSESSED UTILITY TAXES

Pursuant to Section 4.465 of this Ordinance, the Collector may file an action in the Rincon Tribal Court to recover the amount of any delinquent Utility Taxes due.

§ 4.430 (RESERVED THROUGH § 4.445)

§ 4.446 DATE TAX DUE

The taxes imposed by § 4.414 and § 4.419 of this Ordinance are payable to the Tax Collector monthly on or before the last day of the month next succeeding each month.

§ 4.447 APPROPRIATION OF TAX REVENUE

Upon receipt of an annual report from the Tax Collector of all revenues raised by the taxes levied pursuant to this Ordinance in the preceeding calendar year, the Tribal Council pursuant to written resolution shall establish an annual appropriation schedule of all tax revenues used to provide essential government services.

§ 4.448 TAX CREDITS, REBATES AND DEDUCTIONS

The Tribal Council may authorize from time to time supplemental appropriations of tax revenue pursuant to §§ 4.414, 4.419, 4.423.07, 4.423.10, 4.423.12, 4.424.01, 4.429.00, for purposes of job preservation and creation, economic investment, energy efficiency, science and technology and direct assistance for economic reinvestment on the Reservation. The Tribal Council shall approve on a case-by-case basis the amount

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allowable for any tax credit, tax rebate or tax deduction. Any application for tax credit, rebate or deduction shall be made to the Tax Collector not later than one year from date the taxes imposed pursuant to §§ 4.414, 4.419, 4.423.07, 4.423.10, 4.423.12, 4.424.01, 4.429.00 were remitted to the Tribe.

REPORTING

§ 4.449 FORMS FOR RETURN

The returns required to be filed by Taxpayers under this Ordinance shall be made upon a form to be prescribed by the Tax Collector.

§ 4.450 TIME FOR FILING RETURN

On or before the last day of the month following each reporting period, a return for the preceding period must be filed by the person required to file the return with the Tax Collector.

§ 4.451 DELINQUENCY DATE

Except as provided in Section 4.453 below, all returns and remittances received within the Tax Collector's office on or before the last business day of the month when due shall be regarded as timely filed. The start of business of the first business day following the month when due shall be the delinquency date. It shall be the Taxpayer's responsibility to cause his return and remittance to be timely received. Mailing the return or remittance on or before the due date or delinquency date does not relieve the Taxpayer of the responsibility of causing his return or remittance to be received by the last business day of the month when due.

§ 4.452 JEOPARDY REPORTING

If the Tax Collector determines that the collection of any tax due to the Tribe is in jeopardy, the Tax Collector may direct the Taxpayer to file his return and remit the tax on a weekly, daily, or transaction-by-transaction basis. Such return and remittance shall be due upon the date fixed by the Tax Collector, and the "delinquency date" shall be the following day.

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§ 4.453 EXTENSIONS

The Tax Collector may extend the time for filing a return, for good cause shown, and only when requested in writing and received by the Tax Collector prior to the tax due date. However, the time for filing such return shall not be extended beyond the last business day of the month next succeeding the due date of such return. In such cases, only the penalties for late filing and late payment may be waived by the Tax Collector for filing and payment within the extension period. Notwithstanding the granting of an extension, the interest payable for late payment of taxes shall be paid for the period commencing upon the original delinquency date and ending on the date the tax is paid. The interest may not be waived by the Tax Collector.

§ 4.454 FINAL RETURN

The final return of a Taxpayer who ceases to engage in activities taxable under this Ordinance shall be due ten (10) days after cessation of such activities.

§ 4.455 INTEREST AND CIVIL PENALTIES

(a) Any Taxpayer who fails to pay any of the taxes imposed in accordance with Section 4.414 when due shall be subject to and shall pay interest upon such tax at the rate equivalent to one-hundred percent (100%) of the prevailing interest rate applicable to late payments in California assessed by the Board of Equalization or other state taxing authority, as adjusted from time to time, per month, or fraction of a month, until paid. Said interest may not be waived by the Tax Collector other than on the basis that Section 4.459 applies.

(b) In addition to interest assessed under subsection (a) above, any Taxpayer who fails to pay before the delinquency date any tax due under Section 4.414 shall, in addition to any other penalties prescribed, pay civil penalties as follows:

- (1) A Taxpayer who fails to timely file a return for a tax imposed by this Ordinance shall pay a penalty of ten (10) per cent of the tax for each month or fraction of a month elapsing between the delinquency date of the return and the date on which it is filed, unless the Taxpayer shows to the satisfaction of the Tax Collector that the failure to timely file is due to reasonable cause and not due to willful neglect. This penalty shall not exceed ten (10) per cent of the tax due.

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- (2) A Taxpayer who fails to pay an applicable tax within the time prescribed shall pay a penalty of ten (10) per cent of the unpaid tax, unless the Taxpayer shows to the satisfaction of the Tax Collector that the failure to timely pay is due to reasonable cause and not due to willful neglect.
- (3) A Taxpayer who fails to file a return within thirty (30) days of having received a written notice and demand from the Tax Collector shall pay a penalty of ten (10) per cent of the tax, unless the Taxpayer shows to the satisfaction of the Tax Collector that the failure is due to reasonable cause and not due to willful neglect or the Tax Collector agrees to a longer time period.
- (4) If the cause of a tax deficiency is determined by the Tax Collector to be negligence, but without intent to defraud, the Taxpayer shall pay a penalty of ten (10) per cent of the amount of the deficiency.
- (5) If the cause of a tax deficiency is determined by the Tax Collector to be due to civil fraud or evasion of the tax, the Taxpayer shall pay a penalty of twenty-five (25) per cent of the amount of deficiency.

(c) Interest imposed under Section 4.455(a) and penalties imposed by Section 4.455(b)(1) & (b)(2) are due and payable upon notice by the Tax Collector and may be challenged by the Taxpayer only after application for a refund and denial of such application. Penalties under Section 4.455(b)(3), (b)(4) & (b)(5) must be asserted by the Tax Collector in a notice of determination of a deficiency and may be challenged by the Taxpayer before payment.

(d) For the purpose of this Section 4.455, "reasonable cause" shall mean that the Taxpayer had a reasonable basis for believing that the tax did not apply to the business activity on this Reservation.

(e) For the purpose of this Section 4.455, "negligence" shall be characterized chiefly by inadvertence, thoughtlessness, inattention, or the like, rather than an "honest mistake". Examples of negligence include:

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- (1) The Taxpayer's failure to maintain records as required by the regulations.
- (2) Repeated failures to timely file returns; or
- (3) Gross ignorance of the law.

§ 4.456 **ERRONEOUS ADVICE OR MISLEADING STATEMENTS BY THE TAX COLLECTOR; ABATEMENT OF PENALTIES AND INTEREST; DEFINITION**

(a) Notwithstanding this Section 4.456, a deficiency shall not bear interest if either:

- (1) The deficiency is directly attributable to erroneous written advice furnished to the Taxpayer by the Tax Collector in response to a specific request from the Taxpayer and not from the Taxpayer's failure to provide adequate or accurate information.
- (2) All of the following are true:
 - (A) A tax return form or instruction related to the form prepared by the Tax Collector contains a statement that, if followed by a Taxpayer, would cause the Taxpayer to misapply this Ordinance.
 - (B) The Taxpayer reasonably relies on the statement.
 - (C) The Taxpayer's underpayment directly results from this reliance.

§ 4.457 **DEFICIENCIES; WHEN INACCURATE RETURN IS FILED; WHEN NO RETURN IS FILED**

(a) If the Taxpayer has failed to file a return, or if the Tax Collector is not satisfied with the return and payment of the amount of tax required, and additional taxes are determined by the Tax Collector to be due, including interest and penalties due pursuant to Section 4.455, the Tax Collector shall send, by certified United States mail, or shall hand-deliver a written determination of a deficiency to the Taxpayer, and such

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deficiency shall include any applicable penalties and interest. The deficiency shall be due and payable thirty (30) days after its effective date unless the Taxpayer files a petition for review of the deficiency determination within that period.

- (1) **When a return is filed.** If the Tax Collector is not satisfied with a return and payment of the amount of tax required by Section 4.414, he may examine the return or examine the records of the Taxpayer, and re-determine the amount of tax, penalties, and interest required to be paid, for any periods available to the Tax Collector under Section 4.455, based upon the information contained in the return or records or based upon any information within his possession or which comes into his possession.
- (2) **When no return is filed.** The Tax Collector may not make a determination of a deficiency with respect to a tax return the Tax Collector prepares.

(b) The Tax Collector shall give notice to the Taxpayer of any determination of a deficiency by certified United States mail or hand-delivery of a notice to the Taxpayer at the Taxpayer's last address of record. The effective date of a notice given by certified United States mail shall be the date of mailing as shown on the postmark and the effective date of a notice that is hand-delivered shall be the date of delivery. The notice shall advise the Taxpayer of his right to contest the deficiency by filing a petition for review pursuant to Section 4.462(c).

§ 4.458 CLOSING AGREEMENTS

(a) If the Tax Collector determines that noncompliance with tax obligations results from a reasonable misunderstanding or misapplication of provisions of this Ordinance the Tax Collector may enter into a closing agreement with a Taxpayer that may abate some or all of the tax that the Taxpayer failed to remit together with interest and penalties. All closing agreements shall be subject to the approval of the Treasurer.

(b) The closing agreement shall require the Taxpayer to properly account for and pay such taxes in the future. If a Taxpayer fails to adhere to such a requirement, the closing agreement is voidable by the Tax Collector and he may issue a notice of deficiency for the abated tax, interest and penalties. The Tax Collector may issue a proposed notice of deficiency at any time within six (6) months after the date that he

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declares the closing agreement void or within the period prescribed by Section 4.459(a)(1) of this Ordinance.

(c) After a closing agreement has been signed pursuant to this section, it is final and conclusive, and neither it nor any determination, assessment, collection, payment abatement, refund or credit made pursuant to the agreement shall be reopened, annulled, modified, set aside or disregarded in any way, except on a showing of fraud, malfeasance or misrepresentation of a material fact.

§ 4.459 LIMITATION PERIODS

(a) **Generally.** The following limitation periods apply to all taxes referred to in this Ordinance:

- (1) Except as provided elsewhere in this section, the Tax Collector may issue a notice of deficiency with respect to any tax return at any time within four (4) years after the date on which the tax return was due, or within four (4) years after the date on which the tax return is filed, whichever period expires later.
- (2) Notwithstanding subsection (a)(1) of this section, if a Taxpayer does not report an amount properly reportable that is in excess of ten (10) per cent of the taxable amount stated on the return, the Tax Collector may assess additional tax due at any time within six (6) years after the date on which the return was filed.
- (3) If a Taxpayer fails to file a return, files a fraudulent return, or commits other fraud with the intent to evade (or that has the effect of evading) taxes, the Tax Collector may assess the amount due, plus interest and penalties, at any time within ten (10) years after the date on which the return was either due or the date on which the return was filed, whichever is later.
- (4) Any delay in commencement or completion of any examination by the Tax Collector, which is requested or agreed to in writing by the Taxpayer, shall be excluded from the computation of any limitation periods prescribed by this section and such limitation periods shall be extended for a length of time equivalent to the period of the agreed upon

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delay. However, the Tax Collector shall be not be required to exclude any such period of delay from the Tax Collector's calculation of taxes and interest due.

- (5) A deficiency notice shall be sent by certified mail or hand-delivered to the Taxpayer at the Taxpayer's address of record or to the Taxpayer's agent at the agent's address of record.

(b) **Extension of limitation period.** Any applicable limitation period may be extended by written agreement of the Tax Collector and Taxpayer.

§ 4.460 **TAX COLLECTOR MAY EXAMINE BOOKS AND OTHER RECORDS; FAILURE TO PROVIDE RECORDS**

(a) The Tax Collector may require the Taxpayer to provide and may examine books, records, or other documents reasonably related to the payment of tax of any person who, in the opinion of the Tax Collector, might be liable for any tax under this Ordinance, for any periods not barred by limitations under Section 4.459(a)(2).

(b) In order to perform any examination authorized by this Ordinance, the Tax Collector may issue an administrative request for the attendance of witnesses or for the production of documents.

(c) If within thirty (30) calendar days of receiving a written request for information in the possession of the Taxpayer, the Taxpayer fails or refuses to furnish the requested information, the Tax Collector may, in addition to penalties prescribed under Section 4.455, impose an additional penalty of ten (10) per cent of the amount of any tax deficiency attributable to the information that the Taxpayer failed to provide, unless the Taxpayer shows that the failure was due to reasonable cause and not due to willful neglect.

(d) The Tax Collector may use any generally accepted auditing procedures, including sampling techniques, to determine the correct tax liability of any Taxpayer. The Tax Collector shall ensure that the procedures used are in accordance with generally accepted auditing standards.

(e) The fact that the Taxpayer has not maintained or provided one or more books or records requested by the Tax Collector shall not preclude the Tax Collector from making a determination of deficiency. In such cases, the Tax Collector shall be authorized to use reasonable estimates, projections, or samplings, to determine the correct tax.

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§ 4.461 ERRONEOUS PAYMENT OF TAX; CREDITS AND REFUNDS; LIMITATIONS

(a) A Taxpayer may apply to the Tax Collector for a refund of any taxes that were paid but not due. The application for refund must be filed before the expiration of the limitation period set forth in Section 4.459. Taxpayers seeking a refund shall provide all information requested and reasonably required by the Tax Collector to make a determination as to the Taxpayer's entitlement to a refund.

(b) The Tax Collector shall promptly consider an application for refund and shall issue to the Taxpayer a notice of acceptance or denial of the application for refund.

(c) The Tax Collector shall refund any overpayment of taxes within ten (10) days after determining that the refund is properly owed without regard to whether the Taxpayer has made application for the refund. If the Taxpayer is delinquent in its obligation to pay taxes to the Tribe, or is delinquent in any other financial obligation to the Tribe, the Tax Collector shall apply some or all of the refund as may be necessary to satisfy as much of the obligation as possible.

(d) No credit shall be allowed or refund paid where it appears that the Taxpayer has collected from its customers, by separately stated itemization, the amount of the tax, except that a credit or refund may be allowed in such case if the Taxpayer can present documentation satisfactory to the Tax Collector identifying each customer from whom the excess taxes were collected and establishing that any taxes refunded pursuant to this section will be remitted to those customers within sixty (60) days of receipt of the refund.

(e) Interest shall be allowed at the rate set forth in Section 4.455 on any refund applied for and authorized pursuant to the provisions of this Ordinance. Interest shall be calculated from the date of the Taxpayer's application for refund filed with the Tribe.

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ADMINISTRATIVE REVIEW

§ 4.462 ADMINISTRATIVE REVIEW; PETITION FOR HEARING OR FOR REDETERMINATION; FINALITY OF ORDER

(a) **Applicability.** This section describes the procedures under which a Taxpayer may dispute any determination by the Tax Collector related to taxes owed or asserted to be owed by the Taxpayer.

(b) **Informal conference.** A Taxpayer shall have the right to discuss any dispute subject to this section by informal conference with the Tax Collector or with an auditor before seeking administrative review pursuant to Section 4.462(c), provided that the time for filing a petition for administrative review shall not be extended by such informal conference, except by written agreement between the Tax Collector and the Taxpayer.

(c) **Administrative review.**

- (1) **Filing a petition.** A Taxpayer may seek administrative review of a dispute that is subject to this section by filing with the Tax Collector a petition for review within thirty (30) days of mailing or delivery to the Taxpayer of the notice that is the subject of the petition.
- (2) **Extension to file a petition.** The Taxpayer may request only one extension from the Tax Collector of the time for filing a petition for review. Such request must be in writing, state the reasons for the requested delay and time of delay requested, and must be filed with the Tax Collector within the period set forth in subsection (c)(1) of this section for originally filing a petition. The Tax Collector may grant an extension that shall not exceed fifteen (15) days.
- (3) **Requirements for petition.** The petition shall be in writing, shall describe the action of the Tax Collector which the Taxpayer disputes, and shall state the bases of the Taxpayer's contention that such action is erroneous.
- (4) **Response to petition.** The Tax Collector shall mail or hand-deliver to the Taxpayer and to the hearing officer (or to the

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Treasurer if the hearing officer has not been appointed) a written response to the petition within twenty (20) days of the filing of the petition.

(d) The hearing officer. Upon receipt of a petition, the Tax Collector shall promptly deliver a copy of the petition to the Tribal Council who shall appoint a hearing officer to conduct proceedings for the resolution of the dispute. The hearing officer shall be a person with general knowledge of federal Indian law and taxation.

(e) The hearing. The hearing officer shall review the petition and the response, and shall, upon consultation with the Taxpayer and Tax Collector, schedule a hearing within thirty (30) days of his or her appointment and advise the parties of the general rules of hearing procedure. The hearing officer shall not be required to prescribe strict rules regarding hearsay and authentication of evidentiary records. The parties may be represented by attorneys or advocates of their choice in all proceedings conducted under this section. The hearing officer shall maintain a record of the proceeding that shall include all papers filed with the hearing officer and all papers offered into evidence.

(f) The hearing officer's decision. The hearing officer shall, within thirty (30) days of the hearing, render a written decision, which shall include a summary statement of the reasons for the decision. The hearing officer shall mail copies of the decision to the parties. The decision may, in the hearing officer's discretion, include an award of fees and costs to the prevailing party upon a finding that such award is both reasonable in amount and warranted under the circumstances. If neither party seeks a reconsideration, the decision becomes final thirty (30) days after the date of the decision. Either party may seek reconsideration of the decision by written motion filed and served within fifteen (15) days of the date of the decision. If a motion for reconsideration is determined by the hearing officer to be not timely filed, the hearing officer shall notify both parties in writing of the determination of untimeliness, and the decision will be final fifteen (15) days after the date of the notice. If a motion for reconsideration is timely filed and it is denied, the hearing officer shall notify both parties in writing of the denial and the decision will be final fifteen (15) days after the date of the notice. If a motion for reconsideration is granted, the hearing officer shall issue an amended decision which will be final fifteen (15) days after the date of the new or supplemental decision. A motion for reconsideration may not be based upon evidence not in the hearing officer's record, except upon a showing that such evidence was unavailable due to fraud.

(g) Effect of the final decision. Any determination of deficiency that is upheld by the hearing officer in a final decision shall be assessed, and any application for refund that is upheld by the hearing officer in a final decision shall be paid, thirty (30) days

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after the decision is final unless the deficiency determination or the refund determination is challenged within that time by the filing of a complaint in Tribal Court.

(h) Injunctions. No injunction shall be awarded by any court or judge to restrain the collection of the taxes imposed by this Ordinance or to restrain the enforcement of this Ordinance.

§ 4.463 JEOPARDY ASSESSMENTS

(a) If the Tax Collector believes that the collection of any deficiency of any amounts imposed by this Ordinance will be jeopardized by delay, he shall deliver to the Taxpayer a notice of such finding and demand immediate payment of deficiency declared to be in jeopardy.

(b) Jeopardy assessments are immediately due and payable and the Tax Collector may immediately begin proceedings for collection. The Taxpayer, however, may stay collection by filing, within ten (10) days after receipt of notice of jeopardy assessment, or within such additional time as the Tax Collector may allow, by bond or collateral in favor of the Tribe, in the amount declared by the Tax Collector in his notice to be in jeopardy.

(c) The bond required by this section shall be issued in favor of the Tribe by a surety company authorized to transact business in the State of California and approved by the Treasurer as to solvency and responsibility. Collateral shall consist of marketable securities or cash, which will be deposited with the Treasurer of the Tribe.

(d) If bond or collateral is not filed within the period prescribed by subsection (b) above, the Tax Collector may immediately assess and collect the deficiency. The Taxpayer nevertheless shall be entitled to initiate the review proceedings provided in Sections 4.462 & 4.464.

§ 4.464 JUDICIAL REVIEW

(a) A Taxpayer may seek judicial review of all or any part of a hearing officer's decision by initiating an action against the Tribe in the Rincon Tribal Court within thirty (30) days of the date that the decision becomes final. A Taxpayer is not required to pay any tax, penalty, or interest upheld by the hearing officer before seeking such judicial review.

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(b) The Tax Collector may seek judicial review of all or any part of a hearing officer's decision by initiating an action against the Taxpayer in the Rincon Tribal Court within thirty (30) days of the date the decision becomes final.

(c) The court may reverse the decision of the hearing officer in whole or in part but only upon a finding that the decision is clearly erroneous. The court shall not consider any contentions or evidentiary materials other than those found in the record of the hearing officer's proceeding.

§ 4.465 COLLECTION OF ASSESSED TAXES

(a) The Tax Collector and other Tribal officials designated by the Business Committee, may collect assessments in the same manner as judgments of the Rincon Tribal Court.

(b) Every tax imposed by this Ordinance, and all interest and penalties thereon, shall become, from the time the same is due and payable, a personal debt to the Tribe from the person liable, but shall be payable to and recoverable by the Tax Collector.

(c) An action in the name of the Tribe may be brought at any time by the Attorney General, or designee attorney, at the request of the Tax Collector, to recover the amount of any taxes, interest and penalties due under this Ordinance.

(d) There shall be no levy made which will impinge upon the federal trust.

§ 4.466 MANNER OF MAKING REMITTANCE OF TAX; TAX COLLECTOR'S RECEIPT

All remittances of taxes imposed by this Ordinance shall be made by bank draft, check, cashier's check, money order, electronic funds transfer, credit, debit card or cash to the Tax Collector, who shall issue his receipts therefor to the Taxpayer; provided, that no remittance for the tax assessed and levied under the provisions of the Ordinance shall be deemed received unless and until it has been paid in cash to the Tax Collector.

§ 4.467 (RESERVED THROUGH § 4.493)

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MISCELLANEOUS

§ 4.494 INDEMNITY FOR STATE TAXES

This Ordinance shall authorize the Treasurer, or designee, with the written consent of the Tribal Council to protect the Taxpayer from paying both Tribal and state taxes with respect to the same sale of tangible personal property or as applied to the same cost of a hotel room by providing a procedure whereby by the Taxpayer can establish to the satisfaction of the taxing authority that it has done everything legally required under state law to exempt the tax and that the state taxing authority nevertheless has assessed and demanded payment of the tax(es). If the Taxpayer makes such a showing within thirty (30) days from receipt of notice and demand from the state, the Tax Collector, at his or her option, shall waive the Tribal tax due hereunder, refund the Tribal tax if already collected or enter an agreement with the Taxpayer under which the Taxpayer assigns its rights to the Tax Collector and the Tax Collector agrees to indemnify and hold the Taxpayer harmless from any costs associated with opposing the state tax(es) and any state tax liability in order that the Tax Collector can legally challenge the state's authority or jurisdiction to impose state tax(es) on the Reservation.

§ 4.495 STATE TAXATION NOT APPROVED

Nothing in this chapter shall be deemed to constitute acquiescence in or approval of any jurisdiction of California to tax Reservation business transactions. It is the intention of the Tribe, pursuant to the adoption of this Ordinance, to preempt any conflicting California State or local taxes to the maximum extent permitted by federal law.

§ 4.496 APPORTIONMENT

The taxes imposed pursuant to this Ordinance and pursuant to California law may, upon the agreement of the Tribe, California and/or San Diego County, be apportioned between the Tribe and the State and/or San Diego County to reflect the amount of services each government provides on the Reservation and in light of any other revenue sharing or financial arrangements between the Tribe, California and/or San Diego County, or according to any equitable formula agreed to by the Tribe, California and/or San Diego County.

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§ 4.497 SEVERABILITY

If any section or subsection of this Ordinance is later invalidated, struck down, repealed, found unconstitutional, or otherwise becomes legally inoperative in any manner, all other sections, and subsections shall remain in full force and effect.

§ 4.498 NO WAIVER OF SOVEREIGN IMMUNITY

All inherent sovereign rights of the Band as a federally recognized Indian tribe with respect to provisions authorized in this Ordinance are hereby expressly reserved, including sovereign immunity from suit. Nothing in this Ordinance shall be deemed or construed to be a waiver of the Band's sovereign immunity.

§ 4.499 ADMINISTRATION; RULEMAKING; CONFIDENTIALITY

(a) The administration of this Ordinance is vested in the Tax Collector, except as otherwise specifically provided, and all payments shall be made to the Tax Collector.

(b) The Tax Collector shall, subject to the approval of the Tribal Council, prescribe the regulations necessary for the administration of this Ordinance.

(c) It shall be unlawful for the Tax Collector, his or her designee, to reveal to any person, other than another tribal employee acting in an official capacity on behalf of the tribal government or legal counsel acting in a professional capacity on behalf of the tribal government, any information contained in the return of any Taxpayer or any other information about any Taxpayer acquired as a result of the Collector's or other employee's employment with the Tribe, except:

- (1) The Tax Collector may disclose information, including but not limited to the measure and amounts of any unpaid tax, interest, and penalties owed by a specific Taxpayer, to persons acting in their legal capacity as successors, receivers, trustees, personal representatives, executors, guardians, administrators, and assignees with respect to a direct interest in the business operations or financial affairs of the specific Taxpayer.
- (2) The Tribal Council may authorize an examination of any return or audit of a specific Taxpayer made pursuant to this Ordinance in matters being investigated by authorized agents

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of the federal government, a federal tax court, federal court of appeals, or the United States Supreme Court. In no event shall any state, municipality, community, county, or their political subdivisions or entities, be given jurisdiction to examine any return or audit of a specific Taxpayer made pursuant to this Ordinance without the prior written approval of the Taxpayer and the Tribal Council.

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