

ORDINANCE NO. 126

UTILITY BUSINESS ACTIVITY TAX ORDINANCE

BE IT ENACTED BY THE SWINOMISH INDIAN SENATE, that the following is adopted as an Ordinance of the Swinomish Indian Tribal Community pursuant to Article VI, Sections 1 (b) and (d) of the Tribe's Constitution and Bylaws:

CHAPTER 1. LEGISLATIVE FINDINGS AND PURPOSE

1.010 Taxation Authority

This Ordinance is enacted pursuant to the inherent sovereign powers of the Swinomish Indian Tribal Community and such other powers as have been delegated to, vested in, or confirmed in the Tribe through the actions of the United States.

1.020 Benefits of Tribal Government

Among the benefits provided by the tribal government to tribal members and to non-members residing or conducting business upon the Swinomish Indian Reservation are the following: the provision of governmental services, including public sewage collection systems, water systems to provide safe drinking water and fire protection, tribal roads, solid waste collection, and social services and education programs; the maintenance of public health, safety, and law and order, including tribal police, fisheries enforcement, hazardous emergency response, environmental protection, comprehensive land use planning and regulation, and the provision of a Tribal Court system with general jurisdiction for the resolution of civil disputes and limited jurisdiction for the prosecution of criminal actions; the protection of Reservation lands and resources; the provision of public recreational amenities and facilities such as athletic fields, a gymnasium, meeting rooms, parks, and tribally owned tidelands; the support of cultural and religious events and activities; the promotion and regulation of Reservation businesses and economic development; and the provision of employment to both members and non-members of the Tribe.

1.030 Need for Tribal Governmental Revenue

- (a) The Tribe has been able to obtain numerous federal and state grants, low interest loans, and other programs which have, in part, financed the provision

of public services and benefits to the Reservation community. The full cost of these needed and beneficial programs and services are not covered by the programs, themselves, however, and it is necessary for the Tribe to raise supplemental revenues locally to continue to provide these essential public services. The Swinomish Indian Senate finds that the entire Reservation community, both Indian and non-Indian, whether residing, employed, or otherwise doing business on the Reservation, benefits from these tribal governmental services and programs directly and because the tribal services and programs supplement or replace other governmental programs and relieve other units of government from the full burden of these programs. It is appropriate, therefore, that a portion of the costs of these services be borne by persons engaged in or benefiting from business activities on the Reservation, who thereby benefit from governmental services provided by the Tribe.

- (b) The Tribe makes contributions to Fire District # 13 to defray a portion of the cost of fire protection and emergency medical services on the Reservation. Revenues are needed by the Tribe to fund such contributions.

CHAPTER 2. DEFINITION OF TERMS

2.010 General

Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as set forth in this Chapter.

2.020 Buyer

"Buyer" means, without limiting the scope hereof, every person who receives goods or services from a seller in exchange for a promise to deliver to the seller, or for the actual delivery to the seller, of money or other goods or services of value to the seller.

2.030 Cash Discount

"Cash Discount" means a deduction from the invoice price of goods or charge for services which is allowed if the bill is paid on or before a specified date.

2.040 Doing Business within the Swinomish Reservation

A utility is "doing business within the Swinomish Reservation" whenever it makes a retail sale within the Swinomish Reservation.

2.050 Gross Receipts

"Gross Receipts" means the full selling price billed by a utility for the retail sale of utility services.

2.060 Person

"Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club company, joint stock company, business trust, tribal, state, or other local government or any agency thereof, private or municipal corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise.

2.070 Retail Sale

"Retail Sale" means every sale of utility services except wholesale sales.

2.080 Retail Sale within the Swinomish Reservation

A utility makes a "retail sale within the Swinomish Reservation" whenever the retail sale takes place within the exterior boundaries of the Swinomish Reservation or is to or for the benefit of a buyer or service address physically located within the exterior boundaries of the Swinomish Reservation, regardless of the mailing address at which the buyer receives a bill for such retail sale.

2.090 Sale

"Sale" means any provision of services or the transfer of ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "retail sale." It includes renting or leasing, conditional sales contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price.

2.100 Seller

"Seller" means every person making a retail sale to a buyer.

2.110 Selling Price

"Selling Price" means the consideration, whether money, credits, rights, or other property, expressed in the terms of money paid or delivered by a buyer to a seller, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued by the seller and without any deduction on account of losses; but shall not

include itemized taxes paid by the buyer and the amount of cash discount actually taken by a buyer.

2.120 Tribe

"Tribe" means the Swinomish Indian Tribal Community, a federally recognized Indian tribe organized pursuant to section 16 of the Indian Reorganization Act of 1934, whose governing body is the Swinomish Indian Senate.

2.130 Utility

"Utility" means any person operating, for hire or sale, a plant, equipment, or system the provision of utility services.

2.140 Utility Services

"Utility services" means:

- (a) the distribution of water;
- (b) the collection or processing of sewerage system products;
- (c) the pick-up, transfer, storage, treatment, or disposal of waste;
- (d) the transmission of telephone, telegraph, or any other electronic signals used for communication;
- (e) the distribution of television signals via a community television antenna or cable system; and
- (f) the distribution of electricity, natural, artificial, or mixed gas, propane, liquified petroleum gas, heating oil, or other energy sources; but the term shall not include the provision or distribution of firewood; nor shall it include the provision or distribution of gasoline or diesel fuels clearly intended for use by the final consumer in motor vehicles or boats.

2.150 Waste

"Waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include material collected primarily for recycling or salvage.

2.160 Wholesale sale

"Wholesale sale" means a sale of utility services to a utility for resale by that utility.

Chapter 3. IMPOSITION AND COLLECTION OF TAX

3.010 Imposition of Gross Receipts Tax

Except as otherwise provided in section 3.020, there is imposed on and there shall be collected from each utility doing business within the Swinomish Reservation a business privilege tax equal to 3% (three per cent) of the utility's gross receipts generated from retail sales within the Swinomish Reservation.

3.020 Exemption -- Utilities Taxed Pursuant to Tribal Franchise Agreement

The tax provided for in section 3.010 shall not apply to any utility that pays a tribal tax pursuant to the terms of a franchise agreement with the Tribe, so long as each of the following conditions is met:

- (a) the franchise agreement was entered into prior to the date of enactment of this Ordinance; and
- (b) the franchise agreement requires the payment of a tribal tax; and
- (c) the franchise agreement bars an increase in the tax rate provided for in the agreement; and
- (d) the franchise agreement remains in effect.

3.030 Timing of Sales

For the purposes of this Ordinance, a sale is deemed to have occurred at the time buyers are billed for the seller's actual or promised delivery of goods or services to the buyer.

3.040 Payment of Taxes and Reporting

All persons required to pay the tax imposed herein shall file with the Tribe's Finance Director, within thirty days following the end of each calendar quarter, a statement of that person's retail sales made within the Reservation during that quarter. Such forms shall be filed following the end of each calendar quarter even if no taxes imposed under this Ordinance are due. This statement shall be made on the proper form as made available by the Tribe and signed by the person responsible to conduct the utility's official business attesting to the accuracy of the statement. Full payment of any taxes due under this Ordinance must accompany the statement and be received by the close of business of the last working day of the month following the end of the quarter for which the taxes were imposed.

3.050 Taxpayer Records

Upon notice from the Tribe's Finance Director, the taxpayer shall make available to the Finance Director or his designate the taxpayer's books and records regarding the tax.

Chapter 4. ENFORCEMENT AND APPEALS

4.010 Tribal Finance Director

This Ordinance shall be administered by or under the supervision of the Tribe's Finance Director.

4.020 Interest on Late Payments

If any sum payable under this Ordinance is not paid to the Tribe by the date specified, there shall be added to the unpaid sum interest at the rate of 18% (eighteen per cent) per year.

4.030 Penalties for Late Filing and Late Payment

In addition to interest on late payments, as provided in section 4.020, one or both of the following penalties shall apply:

- (a) If any return or statement is not filed by the due date specified in this Ordinance, a penalty of 5% (five per cent) of the total tax due with the return or statement (exclusive of interest and other penalties) shall be added to the tax due.
- (b) If any payment is not made by the due date specified in this Ordinance, a penalty of 5% (five per cent) of the total tax due with the return or statement (exclusive of interest and other penalties) shall be added to the tax due.

4.040 Cost of Collection Actions

In any action brought to enforce the provisions of this Ordinance or to collect any sums due, including interest and penalties, the Tribe shall be entitled to its actual costs and reasonable attorney fees incurred in bringing the action. Any judgment entered shall bear interest at the rate of 18% (eighteen per cent) per year until paid.

4.050 Appeals to Tribal Court

The Swinomish Tribal Court shall have jurisdiction over any appeals relating to this

Ordinance and the tax imposed herein.

CHAPTER 5. MISCELLANEOUS

5.010 Effective Date

This Ordinance shall become effective on January 1, 1999, as to all sales that are deemed, pursuant to section 3.020, to have occurred on or after that date.

5.020 Severability

The invalidity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of part of this Ordinance which can be given effect without such invalid part or parts.

Brian Cladoosby
Brian Cladoosby, Chairman
Swinomish Indian Senate

CERTIFICATION

As Secretary of the Swinomish Indian Senate, I hereby certify that the foregoing ordinance was approved at a Regular Meeting of the Swinomish Indian Senate held on August 6, 1998, at which time a quorum was present and the ordinance was passed by a vote of 5 FOR, 0 AGAINST, and 0 ABSTENTIONS.

Superintendent's approval pursuant to authorities to 209 DM 8, Secretary's Order No. 3177, Secretary's Order No. 3150, 19 BIAM Bulletins 13, 14, 15 and Amendments thereto, and Portland Area Office 19 BIAM Bulletin No. 9701 dated Feb. 1, 1997.

Lydia Charles
Lydia Charles, Secretary
Swinomish Indian Senate

Signature *Jill A. Black*
Date _____