

NORTHERN ARAPAHO CODE

TITLE 15. TAXATION

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Section 101 - Authority. The Northern Arapaho Tribe is a sovereign, federally recognized Indian Tribe. The Northern Arapaho Business Council is authorized under tribal law to enact tribal codes. This Code is enacted pursuant to the Tribe's inherent powers of self-government, which includes the power to regulate and tax economic activities within the jurisdiction of the Tribe and to spend such tax revenues for the benefit of the Tribe, tribal members, residents of the Wind River Reservation or the public.

Section 102 - Findings. Unemployment and poverty on the Wind River Indian Reservation are unconscionably high. The development of educational, employment and business opportunities and the provision of governmental services or assistance on the Reservation are essential in addressing these and related issues. Enactment of this Code will assist in raising revenue necessary for the Tribe to provide governmental services which are essential to the health, education and general welfare of the Tribe, its members and Reservation residents.

Section 103 - Definitions. As used in this Code:

(a) "Business Council" means the Northern Arapaho Business Council unless otherwise specifically provided;

(b) "Code" means the Northern Arapaho Taxation Code;

(c) "Court" includes every court and judge having jurisdiction in the case;

(d) "Person" includes individuals, general partnerships, limited partnerships, limited liability companies, corporations, trusts, business trusts, real estate investment trusts, estates and other associations;

(e) "Real Property" includes land, any interest, leasehold or estate in land and any improvements on it;

(f) "Reservation" means the Wind River Indian Reservation, Wyoming;

(g) "Taxpayer" means that person upon whom falls the legal incidence or obligation to pay the applicable tax or as may be

further defined in this Title;

(h) "Tribal Court" means the Wind River Tribal Court or other court duly authorized by the Northern Arapaho Tribe;

(i) "Tribe" means the Northern Arapaho Tribe unless otherwise specifically provided.

Section 104 - Administration. The provisions of this Code shall be generally administered by the Finance Department of the Tribe or such other department, agency or entity as the Business Council may designate from time to time.

Section 105 - Severability. If any provision of this Code, any regulations promulgated hereunder, or any application hereof is held invalid by a court of competent jurisdiction, the valid provisions of this Code and the valid regulations shall continue in full force and effect.

Section 106 - Effective Date. The provisions of this Code shall be effective on the date of enactment certified by the Business Council.

Section 107 - Appeals; Administrative Procedures. Any taxpayer, or any person or entity charged with collecting or remitting taxes under this Title, who is aggrieved by the administration of this Title may request an administrative appeal or adjudication within fifteen (15) days of the action giving rise to the grievance by submitting a written request for the same to the Business Council, and must include in such request a short and plain statement of the basis for the appeal. The Business Council may request an administrative appeal or adjudication in aid of its interests in the administration of this Title at any time.

(a) Appointment, Authority and Duties of Administrative Law Judge.

(1) The Tribe shall appoint a disinterested person to serve as Administrative Law Judge ("ALJ") to conduct adjudications under this Code who shall be duly qualified

and licensed to practice law before the Tribal Court or any other tribal or federal court of law and who shall conform to the ethics and standards of conduct applicable to judges of the Tribal Court.

(2) Any ALJ duly appointed by the Tribe shall conduct such pre-hearing conferences as the ALJ deems reasonably necessary, shall encourage settlement of disputes to the extent practicable, and may exercise reasonable discretion regarding scheduling, notices and hearing procedures. The ALJ shall issue a written ruling or decision on issues of law or fact which are presented by the parties, but shall not issue advisory rulings or decisions on matters not before him or her.

(3) The ALJ is authorized to issue such orders and subpoenas as he or she deems reasonably necessary to effectuate the purposes of this Code including, without limitation, orders regarding discovery and sanctions for violations of applicable law or regulation, or such orders as are available in civil proceedings in the Tribal Court.

(4) Once appointed, the same ALJ who first heard and considered any matter also should consider any motion for reconsideration or motion for relief from decision and order, to the extent practicable. All appointments, terminations, and reappointments of an ALJ are in the sole discretion of the Tribe and not subject to review by any court.

(5) The ALJ may adopt such additional procedures and rules for the conduct of hearings as necessary or convenient so long as they are consistent with this Code and other provisions of applicable law.

COMMENT

The Shoshone and Arapaho Law and Order Code (S&A LOC) Chapter 5 sets forth rules for admission to practice in the Tribal Court. S&A LOC Section 1-5-6 requires persons admitted to practice to conform their conduct to the requirements and suggested behavior of the Code of Professional Responsibility as adopted by the American Bar Association. S&A LOC Section 1-3-6 (3) requires Tribal Court judges to conform their conduct to standards set forth in the Code of Judicial Conduct as adopted by the American Bar Association.

(b) Notice of Proceedings; Service of Process.

(1) All parties who have filed a timely request for adjudicated proceedings shall be served by the ALJ with a notice of hearing at least seven (7) days before the date set for the hearing unless all parties consent to a shorter period. The notice shall state the time and place of the hearing.

(2) All papers served by any party shall be served upon all counsel of record and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

(3) Any document submitted in the proceeding shall be served on all other parties by the party filing it. Orders issued by the ALJ shall be served by the ALJ, who may request the Tribe to do so on his or her behalf.

(4) Service may be made by personal service by any disinterested party over the age of eighteen (18) years, by certified mail, or by regular mail sent postage prepaid to a party's last known address.

(c) Pre-Hearing Discovery.

(1) **Discovery.** Administrative hearings are informal, expedited matters; accordingly, traditional discovery practice common before courts of law is inappropriate. Discovery practice in matters before the ALJ is limited. Parties must undertake to request information from the other parties or the Tribe in a manner consistent with the following guidelines.

(2) **Records.** Requests for documents or other forms of records from the person collecting or remitting the tax, taxpayer, or other interested persons shall be by submission of requests for production. The files and records of the Tribe are often confidential and protected from the scrutiny of any person; therefore, requests for production of documents from the Tribe shall be made by motion to the ALJ.

(3) Interviews and Depositions.

(A) The ALJ may permit depositions, only in cases of necessity, exigency, a witness' failure to cooperate, witness unavailability for hearing, the inadequacy of an interview, or other similar good cause shown and only if the information sought is not available by other reasonable means. Any request for permission shall describe the nature and scope of information to be sought in the interview or deposition.

(B) Depositions shall be conducted under such limitations, terms and conditions as specified in the order authorizing them.

(C) In order to promote a free discussion of facts and opinions, the Tribe may make relevant staff available for unrecorded interviews by any party. The Tribe shall cooperate in good faith with reasonable requests of any party, but the Tribe is not obligated to disclose confidential or protected information. The Tribe may require an unrecorded interview be conducted before the ALJ may authorize a deposition over the Tribe's objection.

(4) Interrogatories.

(A) Each party may serve up to ten (10) written interrogatories upon each adverse party, each of which shall consist of a single, particularized question without subparts and without multiple subjects or objectives. Additional interrogatories may be served only with permission of the ALJ upon a showing of good cause.

(B) Unless otherwise ordered by the ALJ, responses to the interrogatories shall be provided to all parties within twenty (20) days of service of the interrogatories.

(C) The answering party may reasonably object to any interrogatory, and thereby avoid answering until directed to do so upon resolution of the objection by the ALJ.

(5) Additional Discovery Rules.

(A) Unless otherwise ordered by the ALJ, discovery shall be completed no later than seven (7) days in advance of the hearing date.

(B) Upon good cause shown, the ALJ may allow additional discovery, may further limit discovery, or may modify the time limits set forth in this rule.

(C) Parties are under a continuing obligation to update, correct, supplement or amend any information previously provided, and to do so in a timely manner until the conclusion of the hearing.

(D) Witnesses are encouraged, but not obligated, to freely share information with all parties. A party shall have unrestricted ability to contact other non-party witnesses for these purposes.

(d) Conduct of Hearings.

(1) The proceedings at the hearing shall be recorded or transcribed.

(2) Oral evidence shall be taken only upon oath or affirmation.

(3) Each party to a hearing shall have the right to be represented by an attorney; to call and examine witnesses; to introduce exhibits relevant to the issues of the case; to cross-examine opposing witnesses in any matters relevant to the issue of the case; to impeach any witness regardless of which party called him or her to testify; and to offer rebuttal evidence.

(4) A person who is not a party may be called and examined.

(5) The hearing shall not be conducted according to rules relating to the admissibility of evidence in courts of law. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to

rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.

(6) The parties or their counsel may, by written stipulation, agree that certain specified evidence may be admitted, although such evidence may be otherwise subject to objection.

(A) The ALJ may take official notice of any fact which may be judicially noticed by the Tribal Court. The parties shall be informed of any information, matters or facts so noticed and shall be given a reasonable opportunity, on request, to refute such information, matters or facts by evidence or by written or oral presentation of authorities, the manner of such refutation to be determined by the ALJ. The ALJ may, in his or her discretion, before rendering a decision, permit the filing of amended or supplemental documents and shall notify all parties thereof and provide a reasonable opportunity for objections thereto.

(B) If any person in proceedings before the ALJ disobeys or resists any lawful order, refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct at the hearing or so near the place thereof as to obstruct the proceeding, the person may be punished for contempt in accordance with the Rules of Court if the ALJ certifies the facts underlying the contumacious behavior to the Tribal Court. Thereafter, the Tribal Court shall have jurisdiction in the contempt matter, and the same proceeding shall be had, the same penalties may be imposed, and the person charged may purge himself or herself of the contempt in the same way as in the case of a person who has committed contempt in the trial of a civil action before the Tribal Court.

(7) Any two or more parties may stipulate to offer into evidence as an exhibit or other evidence any fact or matter in issue of substance or procedure. The ALJ shall enter an order approving or disapproving any stipulation

offered into evidence, or may require modification as a condition for approval.

(8) Before the commencement of the hearing, each party sponsoring an exhibit must furnish a copy to each other party.

(A) The ALJ may limit the number of copies to be furnished where reproduction is burdensome.

(B) The ALJ shall disregard exhibits provided but not admitted into the record; in like fashion, they shall not be included in the record unless specific request therefor is made.

(C) Rebuttal exhibits and evidence need not be provided in advance to be admitted into evidence.

(9) Except in matters of exigency, no witness may testify by electronic means without prior approval of the ALJ, upon motion timely made and good cause shown.

(e) Rehearing and Post-Decision Relief.

(1) The ALJ may, upon motion made within ten (10) days after the service of the decision and order, order a rehearing on such terms and conditions as he or she may deem just and proper when the ALJ finds cause to believe that the decision and order should be reconsidered in view of the legal, policy or factual matters advanced by the moving party.

(2) Upon motion made within a reasonable time, but in no event later than one (1) year from the service of the decision and order, the ALJ may relieve a party from the decision and order upon a showing that there is additional evidence which is material and necessary and which would be reasonably likely to change the decision of the ALJ, and that sufficient reason existed for failure to present such evidence at the hearing. The motion shall be supported by the affidavit of the moving party or his or her counsel showing, with particularity, materiality and necessity of the additional evidence and the reason why it was not presented at the hearing. Upon rehearing, rebuttal evidence to the additional evidence shall be admitted. After

rehearing, the ALJ may take such action as the additional evidence may warrant.

(3) A motion for relief from a decision and order which is based on any ground other than the presentation of newly discovered evidence shall be governed as to both timeliness and sufficiency by the rules governing similar motions before the Tribal Court.

Section 108 - Appeal to Tribal Court.

(a) Any rulings of the ALJ may be appealed within thirty (30) days of the ALJ's final decision to Tribal Court, in an action naming the Tribe, the person collecting or remitting the tax, the taxpayer, or other interested persons as defendants. In any such action, the Tribal Court shall give appropriate deference to the expertise of the Tribe and of the ALJ. The sovereign immunity of the Tribe is waived, only with respect to such action, but only if filing deadlines are strictly followed, and only to the extent of declaratory or injunctive relief ordered by the ALJ or a ruling by the Tribal Court affirming, reversing or modifying the ALJ's order, or:

(1) In a taxpayer dispute regarding a particular tax, to an order that the taxpayer is entitled to a refund; or

(2) Regarding assessment of penalties by the ALJ, to an order reversing, abating, reducing, or enhancing that penalty.

(b) The Tribal Court may impose conditions on the above awards of relief. In no event may the Tribal Court assess pre-judgment interest, costs, back pay, attorney's fees, or other damages or relief against the Tribe or any lodge or other entity owned by the Tribe. All determinations of the Tribal Court under this Code are final and subject to no further appeal.

Section 109 - Lodging Tax

(a) **Definitions.** As used in this Section:

(1) "Lodge" means any lodge, hotel, motel, or other permanent building or structure where lodging services are

provided and which is located on lands owned solely by, or held in trust by the United States solely for, the Tribe;

(2) "Lodging service" means the provision by any lodge of sleeping accommodations to transient guests, but shall not include the provision of sites for placement of tipis, tents, campers, trailers, mobile homes or other temporary mobile sleeping accommodations;

(3) "Lodging tax" or "local tax" means the excise tax imposed on lodging services under this Section;

(4) "Sales price" means the total amount of consideration, including cash, credit, property or services provided in exchange for services. The term does not include (A) discounts, including cash, terms, comps, or coupons which are not reimbursed by a third party, or (B) interest, financing or carrying charges from credit extended on the provision of services if the amount is separately stated on the invoice, bill of sale or similar document given to the guest or purchaser;

(5) "Taxpayer" means the purchaser of lodging services which are subject to taxation under this Section; and

(6) "Transient guest" means a guest who has not established permanent residence at any single lodge. Any guest who remains for less than sixty (60) continuous days at the same place of lodging is conclusively presumed not to have established permanent residence there;

(b) Levy of Tax. Each taxpayer shall pay to the Tribe a lodging tax equal to nine percent (9%) of the sales price paid by or on behalf of that taxpayer for the purchase of lodging services provided by any lodge.

(c) Collection; Liability. Each lodge shall collect the tax imposed by this Section and is liable for the entire amount of taxes due. Every person purchasing lodging services taxed by this Section is liable for such taxes and shall pay them to the Tribe unless the same have been collected by the lodge.

(d) Reports; Remittance. Each lodge shall, on or before the last day of each month, file a true report with the Tribe showing the preceding month's gross sales and remit all lodging

taxes to the Tribe. If the anticipated or actual average tax to be remitted in any month is insignificant or if monthly reports and remittance would create unnecessary hardship, a lodge may request and the Tribe may accept reports and remittance on a quarterly or other appropriate basis.

Section 110 - [Reserved]

Section 111 - Enforcement.

(a) Interest. If the amount of tax paid is less than the amount due, the difference, together with interest thereon at the rate of one percent (1%) per month from the time the remittance was due, shall be paid by the lodge, tribal retailer, or any person liable for the same within ten (10) days after notice and demand is made by the Tribe. The Tribe may credit or waive interest imposed by this Section as part of a settlement or for any other good cause.

(b) Penalties.

(1) If any part of the deficiency is due to negligence or intentional disregard of the requirements of this Section, but without intent to defraud, there shall be added a penalty of ten percent (10%) of the amount of the deficiency plus interest as provided in the previous subsection.

(2) If any part of the deficiency is due to fraud with intent to evade the tax, there shall be added a penalty of twenty-five percent (25%) of the amount of the deficiency plus interest as provided in the previous subsection.

(3) Taxes and penalties due shall be paid by the lodge, tribal retailer, or any person liable for the same within ten (10) days after notice and demand is made by the Tribe.

(c) Investigation. The Tribe or its agents are authorized to undertake investigations deemed reasonably necessary by the Tribe to ensure compliance with this Code.

(d) Access to Premises and Production of Records;

Penalties. No lodge, tribal retailer, or other person or entity shall neglect or refuse to produce records or evidence or to give information deemed reasonably necessary by the Tribe for enforcement of this Code upon proper and lawful written demand by the Tribe or its agents, nor shall they otherwise interfere or attempt to interfere with any proper and lawful efforts by the Tribe or its agents to obtain such information. In addition to any other remedies provided by law, persons or entities who violate this Section shall be subject to civil penalties not to exceed One Thousand Dollars (\$1,000) per violation, plus reasonable costs and attorney's fees incurred by the Tribe in collecting civil penalties based upon this Code or any other applicable provision of tribal law.

History: 2013. Title 15. The Taxation Code was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated June 10, 2013, Resolution No. NABC-2013-298; and technical amendments approved June 25, 2013, Resolution No. NABC-2013-303. Technical amendments for the purpose of clarifying references to tribal courts were enacted on August 17, 2016, by resolution NABC-2016-702, and additional technical amendments were enacted on August 31, 2016, by Resolution No. NABC-2016-713. The Code was amended by Resolution No. NABC-2018-1028 dated August 21, 2018, to raise the lodging tax; to make conforming edits to the enforcement section; and to add civil penalties for violations.