

## CHAPTER 6-8 TOBACCO CODE

### 6-8-1 Intent

This Chapter governs the taxation, purchase, sale and distribution of tobacco products in Indian country.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)

### 6-8-2 Title

This Chapter shall be known as the Tobacco Code of the Colville Tribal Code.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)

### 6-8-3 Definitions

As used in this Chapter, the following words and phrases shall each have the designated meaning unless a different meaning is expressly provided.

- (a) "Administrator" means the Administrator of the Tobacco Code in the Accounting Department of the Colville Tribes.
- (b) "Cigarette" 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 natural leaf tobacco in its natural state.
- (c) "Cigarette tax" means the tax imposed on wholesalers by this Chapter on the units of cigarettes sold to tobacco retailers.
- (d) "Colville Tribes" means the Confederated Tribes of the Colville Reservation.
- (e) "Council" means the Colville Business Council.
- (f) "Enforcement officer" means the administrator or any other enforcement personnel authorized to administer and enforce this Chapter.
- (g) "Indian country," consistent with the definition of 18 United States Code (U.S.C.) section 1151, means:
  - (1) all land within the exterior boundaries of the Colville Reservation, 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 a Colville tribal member or the Colville Tribes, 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.
- (h) "Retail sales tax factor" means a sales tax factor added to the value of the tax stamps by a formula determined by the Accounting Department and the State of Washington in a memorandum of agreement. This formula allows a state and local sales tax equivalent to be reflected in the value of the tax stamps and shall be assessed and levied on the wholesaler in lieu of a retail sales tax.
- (i) "Self-certified tribal wholesaler" means a wholesaler who is a federally recognized tribe other than the Colville Tribes, or a member of such a tribe, who is not required to be licensed under any state law, and who has signed a contract with the Colville Tribes agreeing to abide by the terms of this Chapter and the Tobacco Compact.
- (j) "Self-certified wholesaler" means a wholesaler located outside Washington State who is not a self-certified tribal wholesaler who has signed a contract with the Colville Tribes agreeing to abide by the terms of this Chapter and the Tobacco Compact.
- (k) "Tax stamp" means the stamp that indicates the cigarette tax and the retail sales tax factor imposed under this

Chapter have been paid, or other stamp authorized under a law or agreement approved by the Colville Tribes by a resolution of the Council.

(Amended 5/23/11, Certified 5/23/11)  
(Emergency Resolution 2011-322)

(l) "Tobacco Compact" means the applicable cigarette tax compact entered into between the Colville Tribes and the State of Washington.

(m) "Tobacco products" mean cigarettes, cigars, smoking tobacco, snuff, chewing tobacco, and other kinds and forms of tobacco prepared in such a manner as to be suitable for chewing or smoking.

(n) "Tobacco retailer" means a business owned by the Colville Tribes or a tribal member that has a license from the Colville Tribes to sell tobacco products at retail on land within Indian country.

(o) "Tribal Court" shall mean the Tribal Court of the Colville Tribes.

(p) "Wholesaler" means every person who purchases, sells, or distributes cigarettes to tobacco retailers only for the purpose of resale.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)  
(Amended 6/27/08, Certified 6/27/08, Resolution 2008-507)

#### **6-8-4 License Required of Tobacco Retailers**

No person may offer for sale or sell any tobacco products without having a valid tobacco retailer license issued pursuant this Chapter.

The Administrator shall issue a tobacco retailer license to all qualified tobacco retailers within Indian country. The Administrator shall develop policies and procedures for the licensure of tobacco retailers which will be implemented by the Administrator upon their approval by the Council.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)  
(Amended 6/27/08, Certified 6/27/08, Resolution 2008-507)

#### **6-8-5 Application for Tobacco Retailer License**

Any business owned by the Colville Tribes or any enrolled member of the Colville Tribes 18 years of age or older may apply upon an application form provided by the Administrator for a tobacco retailer license. The application shall state, at minimum, the name of the business or tribal member, enrollment number, physical address of the applicant and retail business, and require the applicant to comply with this Chapter, the Tobacco Compact, other requirements, including allowing access to enforcement officers for purposes of the enforcement of this Chapter, pursuant to applicable policies and procedures, and be signed by the applicant under oath.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)  
(Amended 6/27/08, Certified 6/27/08, Resolution 2008-507)

#### **6-8-6 Tobacco Retailer License**

Upon approval of an application, the Administrator shall issue the applicant a tobacco retailer license for a three (3) year period which shall entitle the retailer to establish and maintain one tobacco retail business location within Indian country. The license shall be renewable in such manner as the Administrator shall prescribe through its approved policies and procedures. The license shall be non-transferable. If the terms of the license are not violated at its expiration, the license shall automatically be renewed as provided for in applicable policies and procedures for the implementation of this Chapter. The license must be displayed prominently in the tobacco retailer's business.

Tobacco retailers must comply with this Chapter, the Tobacco Compact, and other requirements, including allowing access to enforcement officers for purposes of the enforcement of this Chapter, pursuant to applicable policies and procedures.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)  
(Amended 6/27/08, Certified 6/27/08, Resolution 2008-507)

#### **6-8-7 Cigarette Tax Imposed on Wholesaler**

(May 2011 version of Chapter 6-8)

The Colville Tribes hereby imposes a tax equal to 100 percent of the state cigarette tax upon the wholesaler who buys the tax stamps, stamps the cigarettes, and sells cigarettes to tobacco retailers.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)  
(Amended 6/27/08, Certified 6/27/08, Resolution 2008-507)

**6-8-8 Affixation of Stamps by Wholesalers**

Wholesalers of cigarettes shall be responsible for affixing the tax stamps to the smallest container of cigarettes that will be sold or distributed by the tobacco retailer. Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp. Stamps shall be affixed so that they may be readily viewed by visual inspection.

Wholesalers may possess unstamped cigarettes only for as long as is reasonably necessary to affix tax stamps to the packages for sale or to ship to Indian country.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)  
(Amended 6/27/08, Certified 6/27/08, Resolution 2008-507)

**6-8-9 Tax Stamps**

Tobacco retailers must only purchase, possess, or sell cigarettes that bear the Colville tribal tax stamp or other stamp authorized under a law or agreement approved by the Colville Tribes by a resolution of the Council. No Colville retailer may possess an unstamped cigarette or a cigarette that does not bear the Colville tribal tax stamp or other stamp authorized under a law or agreement approved by the Colville Tribes by a resolution of the Council.

(Amended 5/23/11, Certified 5/23/11)  
(Emergency Resolution 2011-322)  
(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)  
(Amended 6/27/08, Certified 6/27/08, Resolution 2008-507)

**6-8-10 Purchase of Cigarettes by Tobacco Retailers**

Tobacco retailers must purchase cigarettes only from:

- (a) Wholesalers or manufacturers licensed to do business in Washington State;
- (b) Self-certified tribal wholesalers;
- (c) Self-certified wholesalers;
- (d) The Colville Tribes or its governmental units as a wholesaler; or
- (e) Wholesalers or distributors pursuant to applicable law or agreement approved by the Colville Tribes by a resolution of the Council.

(Amended 5/23/11, Certified 5/23/11)  
(Emergency Resolution 2011-322)  
(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)  
(Amended 6/27/08, Certified 6/27/08, Resolution 2008-507)

**6-8-11 Self-Certification of Wholesalers**

A wholesaler who is not licensed in the State of Washington must become a self-certified tribal wholesaler or a self-certified wholesaler to do business in Indian country. In order to become a self-certified tribal wholesaler or a self-certified wholesaler, the wholesaler must enter into a contract with the Colville Tribes agreeing to abide by the terms of this Chapter and the Tobacco Compact.

(Certified 6/18/09, Resolution 2009-433)

**6-8-12 Prohibition on Access to Minors**

Tobacco retailers may not sell or give, or permit to be sold or given, any tobacco products to any person under the age of 18 years. A first violation of this provision shall result in a written warning. A second violation within 365 days of the first shall result in a fine of \$500. A third violation within 365 days of the first shall result in a fine of \$2,500. A fourth violation within 365 days of the first will result in immediate revocation of the tobacco retailer license and the licensee may not reapply for a license for two (2) years.

It is a defense to an enforcement action for a violation of this section that the person making a sale reasonably relied on an officially issued identification. The revocation of a license may be waived if the licensee clearly

(May 2011 version of Chapter 6-8)

establishes that he or she acted in good faith to prevent violations and a violation occurred despite the licensee's exercise of due diligence.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)

(Amended 6/27/08, Certified 6/27/08, Resolution 2008-

507)

**6-8-13 Prohibition on Sales**

(a) The following sales are prohibited:

- (1) Sales of unstamped cigarettes;
- (2) Sales of cigarettes obtained from unauthorized sources;

(b) A violation under this section shall result in the immediate revocation of the tobacco retailer's license and will prohibit the licensee from reapplying for a license for two years.

(Certified 6/18/09, Resolution 2009-433)

**6-8-14 Tribal Immunity—Liability**

A tobacco retailer shall not attempt or be authorized to waive the sovereign immunity of the Colville Tribes from suit, nor shall such retailer attempt or be authorized to create any liability on behalf of the Colville Tribes.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)

(Amended 6/27/08, Certified 6/27/08, Resolution 2008-507)

**6-8-15 Liability Insurance**

All licensed tobacco retailers shall maintain liability insurance upon their premises in the sum of \$100,000.00, and provide proof of insurance to the Administrator of same. A failure to provide proof of such insurance shall be good cause for denial of a license application and the failure to maintain such insurance shall be good cause for immediate revocation of the tobacco retailer license.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)

(Amended 6/27/08, Certified 6/27/08, Resolution 2008-507)

**6-8-16 Enforcement—Remedies—Seizure and Forfeiture**

In addition to other remedies available under this Chapter, any violation of this Chapter is a civil infraction and shall be enforced and prosecuted as a civil infraction pursuant to Chapter 2-3 of the Colville Tribal Code. The Tribal Court is empowered to enforce the provisions of this Chapter.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)

(Amended 6/27/08, Certified 6/27/08, Resolution 2008-

507)

**6-8-17 Denial of License—Revocation of License—Review**

The Administrator may only deny or revoke a tobacco retailer license for failure to comply with or satisfy an applicable provision of this Chapter. Such failure to comply with or satisfy an applicable provision of this Chapter must be shown by a preponderance of the evidence. The denial or revocation decision must be made in writing setting forth the basis for the denial or revocation and be kept in the records of the Administrator. If a tobacco retailer license is denied or revoked, the applicant or tobacco retailer may appeal the denial or revocation to Tribal Court pursuant to Section 2-4-20 of the Administrative Procedure Act of the Colville Tribal Code. The petition for review shall briefly set forth that portion of the decision appealed from; the statutory reference(s) relied upon to support the relief requested; and, which standard of review set forth in Section 2-4-20(g) provides the basis for the petition.

(Certified 6/18/09, Resolution 2009-433)

**6-8-18 Severability**

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this Chapter, or the application of the provision to other persons or circumstances, is not affected.

(Amended 6/18/09, Certified 6/18/09, Resolution 2009-433)

(Amended 6/27/08, Certified 6/27/08, Resolution 2008-507)

(Resolution 1996-40 rescinded Resolution 1974-565)

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**Other Agreements**

Notwithstanding anything to the contrary, if the Colville Tribes enters into agreements relating to tobacco wholesaling, distribution, or retail sales which are not subject to an existing tribal-state cigarette compact, those agreements control over conflicting provisions of this Chapter.

(Amended 5/23/11, Certified 5/23/11)  
(Emergency Resolution 2011-322)  
(Chapter 6-8 Adopted 1995-735)