

Title 23 - Taxation

Chapter 3. Utilities Tax

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Sec. 301. Definitions.

For the purposes of this Chapter, unless the context specifically requires otherwise:

(a) "Utility" means any publicly or privately owned railroad; communications, telegraph, telephone, electric power or transmission line; natural gas or oil pipeline; or similar system for transmitting or distributing services or commodities; but does not include roads or highways constructed or maintained by the United States, the Tribes or the State of Montana or a subdivision thereof.

(b) 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.

(c) "Utility property" means all property used for utility purposes and located on or using trust lands on the reservation. Utility property shall include all improvements placed on trust land on the reservation. For purposes of this section, trust land includes the entire acreage of any tract where the United States holds an undivided interest in such tract in trust for the Tribes or for any Indian.

(d) "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 Tribes 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.

(e) "Person" means any individual, whether Indian or non-Indian, or any organization, including, but not limited to sole proprietorships, partnerships, joint ventures, trusts, estates, unincorporated associations, corporations and governments, or any division, department or agency of any of the foregoing.

(f) "Taxes" include the tax and any interest, penalties or costs imposed or assessed pursuant to this Chapter.

(AMENDED AS PER RESOLUTION NO. 885-2000-7, DATED 02/08/99).

Sec. 302. The Tax Commission.

(a) There is hereby created a Tax Commission, which shall consist of three (3) members, appointed for a term of three (3) years each by a two-thirds (2/3) majority of those voting at a meeting of the Tribal Executive Board at which a quorum is present. The initial Commission shall have one member serving for a term of three (3) years, one member serving for a term of two (2) years and one member serving for a term of one (1) year.

(b) To be eligible to hold the office of Tax Commissioner, a person must (1) be at least twenty-five (25) years of age; (2) have a least a high school education or its equivalent; (3) be of high moral character and integrity; (4) never have been convicted of a criminal offense other than traffic offenses; and (5) be physically able to carry out the duties of office. Members of the Executive Board may serve on the Tax Commission.

(c) On taking office each member of the Commission shall take an oath as follows:

"I, _____, do solemnly swear (or affirm) that I will administer justice and do equal right without respect to persons and will truly, faithfully, and impartially discharge and perform all the duties incumbent upon me as a member of the Tax Commission according to the best of my abilities. So help me God."

(d) Compensation of the Commission members shall be fixed by the Executive Board. Commission members shall receive compensation only for those days they sit as members of the Commission, including meetings they are required to attend as members of the Commission. The rate of compensation for Commission member may not be altered during his/her term of office.

(e) Members of the Commission may be suspended or removed in accordance with the procedures of Title 23, Section 306 of the Code of Justice.

(f) A member of the Commission shall disqualify himself/herself in any proceeding in which his/her impartiality might reasonably be questioned, in which he/she has any personal bias or prejudice concerning any party, in which he/she or a member of his/her immediate family might be a witness or has any personal knowledge of disputed evidentiary facts concerning the proceeding, in which he/she or any member of his/her immediate family is a party or has any financial or other interest in the proceeding, has acted or is acting as an attorney in the proceeding, or in which he/she might otherwise appear to be biased or prejudiced.

Sec. 303. Tax Imposed.

A tax of four percent (4%) of the value on each assessment date of all utility property is hereby imposed.

(AMENDED AS PER RESOLUTION NO. 1213-99-2, DATED 02/08/99.)

Sec. 304. Assessment and valuation.

(a) The assessment date for each calendar year shall be January 1 of that year. Utility property shall be assessed annually as of the assessment date. The Tribes may assess unassessed utility property as of the date upon which they should have been assessed, and may redetermine incorrect or erroneous assessments.

(b) The value of utility property shall be presumed to be equal to the full value per linear mile of the utility as assessed by the State of Montana pursuant to Chapter 15-23 of the Montana Code Annotated, multiplied by the number of miles of the utility located on trust land within the Reservation. The value of utility property not measured by linear mile shall be presumed to be equal to the full value as assessed by the State of Montana pursuant to Chapter 15-23 of the Montana Code Annotated. For purpose of these presumptions the most recent Montana assessment made prior to the assessment date shall be used. Unless a presumed value is challenged pursuant to Section 313, the tax shall be levied and collected upon the presumed value.

(AMENDED AS PER RESOLUTION NO. 1213-99-2, DATED 02/08/99; AND AS PER RESOLUTION NO. 606-98-7, DATED 07/13/98).

(c) If a presumption of value is challenged pursuant to Section 313, the value of the utility property shall be determined by the Tax Commission, after a hearing, based on one or more of the following methods:

(1) Fair market value method. On the basis of the selling prices of comparable property (whether within or outside the Reservation) which are sold by willing sellers to willing buyers, neither of whom are under a compulsion to act.

(2) Present value of income method. By computing the capitalized value of the gross income to be received from the property less the reasonable expenses to be incurred in producing the income, over the remaining useful life of the property.

(3) Any other method which reasonably and accurately reflects the value of the utility property.

(AMENDED AS PER RESOLUTION NO. 606-98-7, DATED 07/13/98.)

Sec. 305. Persons liable for payment.

(a) All owners of utility property are liable for payment of the entire tax assessed upon that interest.

(b) If an owner is an association, joint venture or partnership, the associates, participants or partners both limited and general, shall be jointly and severally liable for the entire tax assessed upon that property.

(c) Each person liable for taxes under this Section shall have a right of contribution from any other person liable for a share of the taxes paid proportionate to the share of such person in the utility property. The owners may, by agreement, alter the allocation by contribution of the tax liability among themselves; but no such agreement shall affect the liability to the Tribes of any person named in subsection (a) and (b) hereof.

Sec. 306. Exemptions.

The tax imposed by this Chapter shall not apply to:

(a) The Assiniboine and Sioux Tribes, any subdivision, agency or program of the Tribes or any enterprise or entity wholly owned by the Tribes;

(b) The United States of its subdivisions, agencies or departments, except to the extent such taxes are authorized by federal law; or If a utility property is owned in part by entities exempt under this Section and in part by entities not exempt, the proportionate share owned by nonexempt entities shall be subject to tax.

(AMENDED AS PER RESOLUTION NO. 1213-99-2, DATED 02/08/99; AND PER RESOLUTION NO. 606-98-7, DATED 07/13/98).

Sec. 307. Declarations of interest.

On or before March 1 following each assessment date, each owner subject to tax under this Chapter must file with the Tribes a declaration of its interest in any utility property on such forms and containing such information as the Tribes may require. If the owner of the utility property is exempt under Section 306, the declaration shall so state. The declaration shall state the value per linear mile of the utility as most recently assessed by the State of Montana.

Sec. 308. Notice of and payment of tax.

(a) The Tribes shall, by April 15 of each year, mail to each owner notice of the assessed value of the utility property and the tax due. The notice shall be based on the presumed value established as provided in Section 304 (b) unless a different value has been finally established by the Tax Commission. The notice shall be mailed to the address specified in the most recent declaration filed pursuant to Section 307, or, if no declaration has been filed, to the owners' last known address. Failure to send or receive notice, shall not relieve the owner of the obligation to timely pay the tax due.

(b) The tax due shall be paid in two (2), equal semi-annual installments, with one-half (½) being due by May 15 following the assessment date, and one-half (½) being due November 15 following the assessment date.

(c) The tax shall be paid by check made payable to the Assiniboine and Sioux Tribes and mailed or delivered to the Tribes at Poplar, Montana. Payment is timely if postmarked or actually delivered on or prior to the due date.

Sec. 309. Penalties and interest for late payment.

(a) A penalty of five percent (5%) shall be charged on any taxes not paid when due, and interest at one and one-half percent (1 ½%) per month shall be charged on the unpaid balance

from the payment due date until the date of payment.

(b) Any person failing to pay taxes when due shall also be liable for a penalty equal to any extraordinary administrative costs, including attorneys' fees and other litigation costs, incurred in collecting the unpaid amount.

(c) The penalties and interest set forth in this Section shall be assessed and collected as a tax imposed under this Chapter.

Sec. 310. Lien for taxes.

(a) Taxes assessed shall be a lien against the utility property subject to the tax. Such lien shall arise in favor of the Tribes as of the assessment date, without notice or demand, and shall be prior and superior to all other liens and encumbrances.

(b) The lien shall continue until the amount of the lien is paid to the Tribes or the lien is released by the Tribes. Partial payment of the taxes shall reduce the amount of the lien by the amount paid.

(c) The Tribes may foreclose upon the utility property subject to a lien by filing a civil action in Tribal Court for that purpose. In the event of such a foreclosure, the utility property shall be sold in a commercially reasonable manner and the proceeds applied first to the expenses for the foreclosure, then to the liability for costs, penalties, interest and tax, in that order. Any remaining balance shall be remitted to the owners of the utility property in proportion to their ownership interest.

(d) The Tribes may release liens as part of a settlement of the taxes due or where the payment of the tax is adequately protected by other security or by a surety bond.

Sec. 311. Civil actions for tax penalties and interest.

In any case of failure of a person liable for taxes under this Chapter to pay the taxes, penalties or interest due the amount of such taxes, penalties and interest may be recovered in a civil action in Tribal Court pursuant to Title 7 of the Code of Justice, or in any other court of competent jurisdiction.

Sec. 312. Refunds of excess tax payments.

Any person who believes that it has overpaid taxes under this Chapter may apply to the Tax Commission for a refund within six (6) months of the overpayment. Any tax paid which, after a hearing pursuant to Section 314 is found to be in excess of that required to be paid, shall be refunded to the person paying the tax, or credited against taxes due from the taxpayer.

Sec. 313. Challenges to presumed value.

(a) Any owner of utility property may, at the time of filing a declaration of interest, or at any time prior to the deadline for filing a declaration of interest, file a challenge to the presumed value established as provided in Section 304 (b). The challenge shall state in detail why the presumed value is not accurate, what the correct value is, and why that value is correct. It shall have attached to it as an exhibit any appraisals or other information upon which the owner intends to rely. The challenge shall be filed with the Tax Commission and a copy shall be served on the Tribes.

(b) During the pendency of a challenge proceeding the tax shall be paid and collected based on the presumed value established as provided by Section 304 (b). If the value assessed by the Tax Commission is greater than the presumed value, any further tax due shall be paid within thirty (30) days of the date of the decision, or, if the decision is appealed, within thirty (3) days of the decision of the appeal. If the value assessed by the Tax Commission is less than the presumed value the Commission shall order a refund of any overpayment or permit the owner to deduct it from future payments.

Sec. 314. Hearing on application for refund or challenge to presumed value assessment.

(a) As soon as practicable after receiving an application under Section 312 of a challenge under Section 313, the Tax Commission shall review the application for adequacy and completeness. If additional information is required, the Commission shall so inform the applicant in writing and

provide a reasonable time for the applicant to provide further information. When the application is adequate and complete the Commission shall schedule a hearing. In the case of a challenge under Section 313, the hearing shall not be less than three (3) months after the date the challenge was served on the Tribes. The applicant shall be given not less than twenty-one (21) days notice of the hearing date.

(b) At the hearing the applicant shall have the right to present oral and written testimony of witnesses under oath, and to be represented by counsel at its own expense. The Commission shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the Commission in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the Commission only under special conditions or stipulations.

(c) The Chairman of the Tribal Executive Board may appoint a representative to represent the interests of the Tribes and present the case for the Tribes at the hearing. The staff member or representative shall have all the same rights at the hearing as the applicant. The Tribes may employ an outside appraiser to assist it.

(d) The hearing shall be on the record, with all testimony taken under oath, and a permanent record shall be made by tape recorder or stenographic means.

(e) If the Commission determines that the applicant has proven by a preponderance of the evidence that the applicant is entitled to a refund or correction of the assessment or both, it shall order the appropriate relief. If the Commission determines that the Tribes have proved by a preponderance of the evidence that a greater assessment is required it shall order an increase in the assess-

ment. Otherwise, it shall deny all relief. The ruling shall either be issued in writing, or orally on the record at the hearing.

Sec. 315. Appeals.

(a) The Court of Appeals of the Fort Peck Tribal Court shall have exclusive jurisdiction to hear appeals from final decisions pursuant to Section 314.

(b) Any party may appeal any final decision under Section 314 within thirty (30) days after the decision by filing a notice of appeal with the Tax Commission, and serving a copy on the Tribes. Thereafter the Tax Commission shall promptly file the full record of the proceeding, including the notice of appeal, with the Court of Appeals.

(c) The Fort Peck Court of Appeals shall hear the appeal in the same manner as it hears appeals of civil cases from the Fort Peck Tribal Court in which a petition for review is granted. In all appeals, the Court shall give proper deference to the administrative expertise of the Commission. The Court of Appeals shall not set aside, modify or remand any determination by the Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. The Court of Appeals shall issue a written decision on all appeals, which decision shall be final.

(d) The Court of Appeals may, in its discretion, award costs and attorneys' fees to the Tribes against any appellant whose appeal was frivolous, malicious, or in bad faith. Such fees shall be assessed and collected as a tax imposed under this Chapter.

Sec. 316. Finality of Tax Commission or Court action.

Any final finding or determination of the Tax Commission pursuant to Sections 312 to 314 which is not timely appealed, and any final determination of the Court of Appeals in proceedings pursuant to Section 315 and of the Tribal Court in proceedings pursuant to Section 311, shall be final and binding in any other proceeding against or by the same person before the Tax Commission or the Tribal Court. In all proceedings before

the Tax Commission or any court, the presumed value established as provided in Section 304 (b) shall be treated as conclusive unless it has been timely challenged pursuant to Section 313, and the Tax Commission has established a different value.

Sec. 317. Enforcement and recordkeeping.

(a) The Tribes may require each owner to keep such records as may be necessary to determine ownership and value of utility property subject to tax under this Chapter. Such records shall be retained for at least six (6) years beyond the date of payment of the tax to which they relate, or if no payment is due, for six (6) years beyond the due date of the declaration of interest to which the records relate.

(b) The Tribes may, for the purposes of preparing for a challenge proceeding under this Chapter or otherwise implementing or enforcing the provisions of this Chapter, inspect property, examine and require the production of pertinent records, books, information, or evidence, and require the presence and testimony under oath of any person within the jurisdiction of the Tribes.

(c) If an owner or other person fails upon request to testify, or to provide information or documents, the Tax Commission may seek and obtain a subpoena or other order from the Fort Peck Tribal Court compelling the testimony or production of the information or documents.

Sec. 318. Settlements of taxes due.

(a) If at any time, the Tribes in good faith are in doubt of the liability of the owner for the payment of taxes, it may compromise the liability by entering in writing with the owner an agreement that adequately protects the interests of the Tribes.

(b) If entered into after any court acquires jurisdiction of the matter, a settlement agreement shall be part of a stipulated order or judgement disposing of the case.

(c) As a condition for entering into a settlement agreement, the Tribes may require the provision of security for payment of any taxes due according to the terms of the agreement.

(d) A settlement agreement is conclusive as to the liability or no liability for payment of taxes relating to the periods referred to in the agreement, except upon a showing of fraud, malfeasance, misrepresentation or concealment of a material fact.

Sec. 319. Assignment or transfer of utility property.

(a) If a person buys substantially all of the assets of an owner of utility property, that person shall withhold from the purchase price and pay to the Tax Commission the amount of taxes owed by the owner prior to the purchase.

(b) If a person buys an interest in utility property, that person shall withhold from the purchase price and pay the Tax Commission a share of the amount of taxes owed by the owner prior to the purchase proportionate to the interest purchased.

(c) Any purchaser failing to withhold taxes shall be personally liable for said taxes up to the value of all the property acquired. Any liability arising under this Section shall be assessed and collected as a tax imposed by this Chapter.

(d) The purchaser may make a written request for and, within thirty (30) days after the owner's records are made available for audit, the Tribes shall send to the purchaser, a notice of the taxes due. Thereafter, the purchaser shall not be personally liable under this Section for any taxes in excess of the amount stated in the notice, or for any such taxes if not notice is given with the time required.

(e) No consent to the assignment or transfer of any utility property shall be granted by the Tribes unless all taxes owed by the transferor have been paid, or that payment has been adequately secured.

Sec. 320. Civil penalties for evasion or interference with tax.

(a) Any owner under-assessed by reason of incomplete or incorrect information provided through negligence or intentional disregard of this Chapter or rules and regulations issued pursuant to this Chapter (but without the intent to defraud) shall be assessed a penalty of twenty-five

percent (25%) of the underpayment of tax, but not less than two hundred fifty dollars (\$250.00).

(b) Any owner under-assessed as a result of its fraud shall be assessed a penalty of fifty percent (50%) of the underpayment of tax, but not less than five hundred dollars (\$500.00).

(c) Any person who assists an owner in fraud resulting in an underassessment shall be subject to a penalty of twenty-five percent (25%) of the underpayment of tax, but not less than two hundred fifty dollars (\$250.00).

(d) Any person who removes from the Reservation any property upon which there is a lien for taxes under Section 308 shall be subject to a penalty equal to the amount of the lien.

(e) Any liability arising under this Section shall be assessed and collected as a tax imposed by this Chapter.

Sec. 321. Criminal offenses.

(a) Any Indian obligated to pay taxes, to file a declaration, to provide information or documents or allow access to property within his/her control pursuant to the provisions of this Chapter who fails to do so, is guilty of a Class B. misdemeanor.

(b) Any Indian who by fraud or misrepresentation attempts to defeat or evade the tax imposed by this Chapter or to assist another to defeat or evade such tax is guilty of a Class A misdemeanor.

(c) Any non-Indian who violates the provisions of subsection (a) or (b) may be excluded from the Fort Peck Reservation or may have his/her right to do business on the Reservation suspended or revoked by order of the Tribal Executive Board.

Sec. 322. Prohibition of suits.

No suits for the purpose of restraining the assessment of collection of the taxes imposed under this Chapter shall be maintained in any court by a person, whether or not such person is the person against whom such taxes were assessed. The remedies provided in Section 312 to 314 shall be exclusive.

Sec. 323. Severability.

If any provision of this Chapter or its application to any person or circumstance, is held invalid by a final judgement of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

Sec. 324. Effective date.

This Chapter shall be effective beginning on the date of approval of this Chapter by the Secretary of the Interior or his/her designated representative. The taxes for the year during which this Chapter is approved shall be assessed as provided herein, but shall be prorated by the number of days during the year that this Chapter was in effect. The Tribes may send out notices for such taxes at any time. The first installment of such taxes shall be due on the due date under Section 308 (b) or thirty (30) days after the notice is mailed, whichever date is later. The second installment shall be due on the due date under Section 308 (b) or thirty (30) days after the notice is mailed, whichever date is later.

(AMENDED AS PER RESOLUTION NO. 2150-87-1, DATED 01/27/87)