



NCA 17-140

CLASSIFICATION: #36. TAXATION AND REVENUE

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 36, CHAPTER 4, ENTITLED "SALES TAX CODE"

Be it enacted by the National Council of the Muscogee (Creek) Nation:

SECTION ONE. AMENDMENT. This amendment shall be codified in Title 36, Chapter 4 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Attorney General is hereby authorized (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and; (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:

SECTION TWO. AMENDMENT. MCNCA Title 36, Chapter 4, §§ 4-105, 4-106, 4-107, 4-108, 4-109 and 4-110 are hereby amended to read as follows:

§ 4-105. Exemptions

The following are hereby specifically exempted from the tax levied pursuant to this Sales Tax Code:

1. Sales of tobacco otherwise subject to taxation under laws of the Muscogee (Creek) Nation;
2. Sales of motor fuels;
3. Sales of drugs or medicines prescribed for the treatment of human beings by a person licensed to prescribe the medicines or drugs;
4. Sales of prosthetic devices to an individual for use by the individual (for use of this paragraph, "prosthetic device" means a device which replaces a missing part of the human body and shall include any supplies physically connected to the device);
5. Medical, dental, optical or other health related goods provided by the Muscogee (Creek) Nation Division of Health Administration;
6. Sales of eyeglasses, contact lenses and hearing aids prescribed for human beings by a person licensed to prescribe such items;

7. Sales of prepared food and drink products by the Elderly Nutrition Program of the Muscogee (Creek) Nation;
8. Sales of bingo cards and pull tabs or electronic simulation of same;
9. Sales of food by the Eufaula Dormitory;
10. Sales of event tickets and concessions at extra-curricular events sponsored by the Eufaula Dormitory;
11. Sales of food or food products for home consumption which are purchased in whole or in part with coupons or debit cards issued pursuant to the federal food program as authorized by §§ 2011 through 2036 of Title 7, Chapter 51 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the state in the federal food stamp program;
12. Sales of eligible vehicle as that term is defined by § 3-102 of this Title;
13. Sales of goods or items of value derived directly from the Muscogee (Creek) Nation territorial jurisdiction including but not limited to livestock, timber, fish and crops for human or animal consumption;
14. Sales of crude petroleum or natural or casing head gas from wells located on tribal property;
15. Sales by any individual enrolled citizen of the Muscogee (Creek) Nation, chartered community, church or ceremonial ground group or other recognized Muscogee Tribal organization (not including business enterprises of the Nation and not including business enterprises of chartered communities) who/which conducts sales within the Muscogee (Creek) Nation territorial jurisdiction, this exemption shall exist only for those holding temporary sales license and shall not exceed more than (30) thirty days total per calendar year;
16. Sales to the Muscogee (Creek) Nation or any office, board, agency, division, school or enterprise thereof and sales to any chartered community of the Muscogee (Creek) Nation;
17. Sales to any other federally recognized Indian Tribe or any office, board, agency, division or enterprise thereof;
18. Sales to the United States government or the State of Oklahoma or any political subdivision thereof;
19. Sales to any city or county government, public school district or public institute of higher education; and
20. Sales for resale, provided that the purchaser must provide the vendor with proper identification and proof of intent to resell the item(s) purchased upon such forms as the Tax Commissioner prescribes;
21. Sales by any charitable or non-profit organization as identified by their official status granted by the Internal Revenue Service.

§ 4-106. Sales licensing

A. Application. Every person desiring to engage in the business of selling goods or items of value within the Muscogee (Creek) Nation territorial jurisdiction except as provided by subsection C of this section, must submit an application for and receive from the Muscogee (Creek) Nation Tax Commission a vendor's sales license prior to establishing or maintaining any place of business or retail or wholesale outlet for the sale of goods or items of value within the Muscogee (Creek) Nation territorial jurisdiction or otherwise soliciting such sales within the Muscogee (Creek) Nation territorial jurisdiction. The provisions of this Sales Tax Code apply to all vendors, including vendors conducting business within the Muscogee (Creek) Nation territorial jurisdiction prior to the effective date hereof and those commencing such business in the future. The vendor's application shall be completed and signed by the owner of the business or, in the case of a corporation or a chartered community, a duly authorized officer thereof. The application shall include an express written acknowledgment of and consent to the civil jurisdiction of the Muscogee (Creek) Nation and its courts for all purposes related to implementation and enforcement of this Sales Tax Code and a designation of a registered agent for service of process at the location to be licensed. Forms for such application and licenses shall be prescribed by and be made available from the Tax Commission. Vendors operating within the Muscogee (Creek) Nation territorial jurisdiction as of the effective date of this Sales Tax Code shall apply for a license within twenty (20) days of September 30, 2000.

B. Types of licenses. The following licenses may be issued:

1. Annual Vendor's Sales License: All vendors engaged in the sale of goods or items of value within the Muscogee (Creek) Nation territorial jurisdiction who are not exempt from licensing as provided in subsection C of this section or otherwise qualified hereunder for a Temporary Sales License, shall apply for and obtain an Annual Vendor's Sales License before engaging in or soliciting for the sale of such goods or items of value. The Annual Vendor's Sales License shall be valid for one calendar year from the date of issuance and shall be nontransferable and non-assignable. A separate license shall be required for each separate location at which a vendor may establish a place of business or retail outlet. The certificate of Annual Vendor's Sales License shall be conspicuously posted in a public area in each such place of business or retail or wholesale outlet. A fee of twenty dollars (\$20.00) shall be paid for each new or renewal of Annual Vendor's Sales License issued. This license shall not be valid for sales by vending machines or sales of fireworks in which case a Muscogee Vending License or a Muscogee Fireworks License shall be required as provided by paragraphs 3 and 4 of this subsection below.

2. Temporary Vendor's Sales License: The Temporary Vendor's Sales License shall be issued to vendors not otherwise exempt as provided in subsection C of this section for special or short term events within the Muscogee (Creek) Nation territorial jurisdiction or temporary solicitation of sales in said territorial jurisdiction, not longer than ten (10) days in duration and shall be valid for a period of ten (10) days. The certificate of Temporary Vendor's Sales License shall be conspicuously posted in a public area in each temporary outlet or, in the case of mobile or traveling salespersons, the license shall be carried by the salesperson and presented for inspection to anyone requesting to view the license. A license fee of fifty dollars (\$50.00) shall be paid for each temporary retail sales license issued and shall be in lieu of sales taxes and applicable sales reports otherwise required under this title. This license shall not be valid for sales by vending machines or sales of fireworks in which case a Muscogee Vending License or a Muscogee Fireworks License shall be required as provided by paragraphs 3 and 4 of this subsection below.
3. Muscogee Vending License: Every vendor soliciting sales within the Muscogee (Creek) Nation territorial jurisdiction through use of a vending machine located or to be located within the Muscogee (Creek) Nation territorial jurisdiction shall, upon making application, be issued a Muscogee Vending License or a Muscogee Small Vending License for each such vending machine and a decal reflecting same. The Muscogee Vending License and Muscogee Small Vending License shall be valid for one calendar year from the date of issuance and shall be nontransferable and non-assignable. A separate license and decal shall be required for each vending machine owned by a non-exempt vendor. The decal shall be affixed to the vending machine for which it has been issued in a conspicuous location. For vending machines which require the payment of less than twenty-five cents (or a token of equivalent value), a Muscogee Small Vending License and decal shall be issued for a license fee of five dollars (\$5.00) and shall be in lieu of sales taxes and applicable sales reports otherwise required under this title. For vending machines which require the payment of twenty-five cents (\$0.25) or more (or a token of equivalent value) a Muscogee Vending License and decal shall be issued for a license fee of twenty dollars (\$20.00) and shall be in lieu of sales taxes and applicable sales reports otherwise required under this title.
4. Muscogee Fireworks License: All vendors engaged in the sale of fireworks within the Muscogee (Creek) Nation territorial jurisdiction who are not exempt from licensing as provided in subsection C of this section, shall, upon making application, be issued a Temporary or an Annual Muscogee Fireworks License before engaging in or soliciting

for the sale of such fireworks. The Temporary Muscogee Fireworks License shall be valid for one calendar month from the date of issuance and shall be nontransferable and non-assignable. The Annual Muscogee Fireworks License shall be valid for one calendar year from the date of issuance and shall be nontransferable and non-assignable. A separate license shall be required for each separate location at which a vendor may establish a temporary or permanent place of business or retail or wholesale outlet. The certificate of Muscogee Fireworks License shall be conspicuously posted in a public area in each such place of business or retail or wholesale outlet. A license fee of fifty dollars (\$50.00) for the temporary license and five hundred dollars (\$500.00) for the annual license shall be paid for each such Muscogee Fireworks License issued and shall be in lieu of sales taxes and applicable sales reports otherwise required under this title.

C. Exemption from license requirements. Vendors, one hundred percent (100%) of whose sales are exempt pursuant to Title 36, § 4-106, shall not be required to apply for and be issued a license. In the event any part of the vendor's sales become taxable under this Sales Tax Code the vendor must apply for and receive a license as provided under this section.

D. Denial of applications. The Tax Commissioner shall have the authority to deny an application for a vendor's license. All denied applicants shall have the right to appeal pursuant to Title 36, § 6-101.

§ 4-107. Payment of tax

A. Reports. Reports shall be made and remitted on a monthly basis as hereinafter provided. Every vendor not otherwise exempt as provided under Title 36, § 4-106 or holding a license under Title 36, § 4-107, shall submit to the Tax Commission, not later than the twentieth (20th) day of each month, a report, on such form as prescribed by the Tax Commission, of all sales and gross amount of sales taxes collected during the preceding month.

B. Payments. Every vendor not otherwise exempt as provided under Title 36, § 4-106 or holding a license under paragraph 2, 3 or 4 of subsection B of Title 36, § 4-107 shall pay the gross sales taxes collected during the preceding month to the Tax Commission at the same time the report for that period is submitted.

C. Payment under protest. A vendor who receives a notice from the Commissioner as authorized by Title 36, § 6-103 alleging a failure to remit some or all the sales tax required to be collected and remitted hereunder may make a full or partial payment of the disputed amount under protest. If a vendor makes a full or partial

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payment under protest, the vendor shall receive a credit of one and one-half percent (1.5%) interest per month, compounded monthly, against any interest penalty assessed under subsection B of Title 36, § 4-110. In the event of a finding that the amount of payment under protest exceeds the vendor's actual liability for taxes owed, the Muscogee (Creek) Nation Tax Commissioner shall refund any overpayment within thirty (30) days of finality of such determination.

§ 4-108. Records and audit

A. Maintenance of records. Every vendor shall maintain for not less than three (3) years complete and adequate records of gross receipts, including invoices showing all goods or items of value received and sold or otherwise disposed of, the price at which sold, and the amount of sales taxes collected and paid to the Tax Commission. The burden of proving that a sale was not a taxable sale shall be upon the vendor. The Tax Commission may subject the records of any vendor to an examination and/or an audit at any time by the Commissioner or, at the Commissioner's discretion, a certified public accountant selected by the Commissioner.

B. Audit costs. The cost of conducting any audit under this section may be assessed as a civil fine against a vendor in the event that the Commissioner determines that the vendor willfully failed to report, collect or remit any tax due hereunder and revealed by such audit or that the vendor otherwise violated this Sales Tax Code.

§ 4-109. Civil penalties; criminal sanctions

A. It shall be unlawful for any person or vendor to solicit sales or otherwise engage in the business of selling goods or items of value within the Muscogee (Creek) Nation territorial jurisdiction in violation of this Sales Tax Code.

B. Every vendor who shall fail to collect the taxes imposed by this Sales Tax Code, or fail to submit the reports and/or remit the taxes imposed by this Sales Tax Code, shall be liable for the full amount of the tax owed, plus interest on the amount of such tax at one and one-half percent (1.5%) per month, compounding monthly, until paid.

C. Any person who or which collects sums due under this Sales Tax Code and fails to remit same to the Tax Commission in accordance with Title 36, § 4-108 shall be liable for a civil fine not to exceed five hundred dollars (\$500.00) for each month for which such remittance was required to be made.

D. Any person required to submit a report pursuant to Title 36, § 4-108 who fails to timely submit such report shall be liable for a civil fine not to exceed two hundred

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dollars (\$200.00) for each monthly report not so submitted. The proceedings for assessing and collecting such fines are set forth in Title 36, § 6-102.

E. The license of any vendor may be revoked, suspended or modified by the Tax Commissioner for any violation of this Sales Tax Code. The Tax Commissioner may also require a vendor who has been delinquent in the reporting or remittance of taxes under this Sales Tax Code to post a bond not to exceed three times the average quarterly tax liability of said vendor. In addition to the foregoing, the Tax Commissioner shall have the broad discretion to determine the amount of and assess any fine or other penalty authorized hereunder.

F. Criminal sanctions. In addition to any criminal sanctions contained in the Muscogee (Creek) Nation Criminal Code, persons violating any provisions of this Sales Tax Code shall be subject to criminal sanctions as follows:

1. It shall be unlawful for any Indian person to willfully, intentionally and knowingly solicit sales or engage in the business of selling goods or time for which they are required to collect sales tax on behalf of the Muscogee (Creek) Nation and failing to collect and remit said sales taxes to the Muscogee (Creek) Nation. Every Indian person convicted of violating this paragraph shall be guilty of a misdemeanor and shall be punished by imprisonment in jail for a term not to exceed one (1) year or a fine not to exceed one thousand dollars (\$1000.00) or by both such fine and imprisonment.
2. It shall be unlawful for any Indian person to willfully and intentionally display a false or expired Vendor's Sales License. Every Indian person convicted of violating this paragraph shall be guilty of a misdemeanor and shall be punished by imprisonment in jail for a term not to exceed one (1) year or a fine not to exceed one thousand dollars (\$1000.00) or by both such fine and imprisonment.
3. It shall be unlawful for any Indian person to willfully, intentionally and knowingly make or cause to be made a false application to the Muscogee (Creek) Nation or any of its programs, entities or agencies for the purpose of obtaining Tribal membership or receiving any permit, license, service or other benefit provided by or through the Muscogee (Creek) Nation. Every Indian person convicted of a violation of this paragraph shall be guilty of a misdemeanor and shall be punished by imprisonment in jail for a term not to exceed one (1) year or a fine not to exceed one thousand dollars (\$1000.00) or by both such fine and imprisonment.

SECTION THREE. EFFECTIVE DATE. This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) National Council on this 29th day of July, 2017.

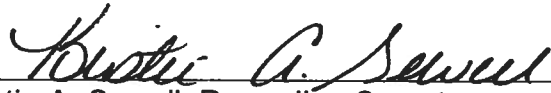
IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



Lucian Tiger III, Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

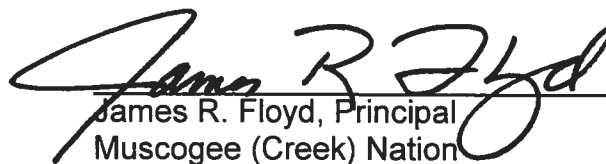
I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Sixteen members with **Fifteen** members attending this meeting on the 29th day of July, 2017 and that the above is in conformity with the provisions therein adopted by a vote of 14 in favor, 0 against, and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.



Kristie A. Sewell, Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this 2nd day of August, 2017 to the above Law, **NCA 17-140** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.



James R. Floyd, Principal
Muscogee (Creek) Nation

