



NCA 22-092

CLASSIFICATION: #28. LANDS AND MINERALS

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 36 "TAXATION AND REVENUE", CHAPTER 4 "SALES TAX CODE" AND ESTABLISHING A NEW SUBSECTION § 4-111 ENTITLED "Credit for State Sales Tax Collected"

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

SECTION ONE. FINDINGS. The National Council finds that:

A. On July 9, 2020, the U.S. Supreme Court issued its ruling in the landmark case of *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), and held that the boundaries of the reservation lands promised to the Muscogee (Creek) Nation (the "Nation") through various treaties were never disestablished and are Indian country lands for the Nation under 18 U.S.C. § 1151.

B. The Nation's tax laws are codified in Title 36 (Taxation and Revenue) of the Nation's Code of Laws and define the Nation's "Territorial Jurisdiction" as: (1) property owned by any Muscogee citizen subject to federal restrictions against alienation or held in trust by the United States for the benefit of any Muscogee citizen or (2) property held in trust by the United States for the benefit of the Muscogee (Creek) Nation or (3) any property owned by Muscogee (Creek) Nation or (4) property which otherwise constitutes Indian Country as that term is used in 18 U.S.C. § 1151.

C. The exercise of taxation authority by the Nation over its Reservation lands is an expression and application of the Nation's inherent powers of Tribal self-government to be able to enact its own laws and be governed by them.

D. An issue has arisen involving lessees, business owners, or vendors (collectively, "vendors") conducting business activity on Citizen-owned restricted lands within the Reservation boundaries that are subject to the Nation's sales tax levied in accordance with the Nation's Sales Tax Code, Title 36, § 4-103. In some cases, the vendors are also being assessed for the same activity a State sales tax by the Oklahoma Tax Commission resulting in the vendor facing a dual-taxation situation.

E. Due to the dual-taxation situation, vendors may move their businesses to locations off Citizen-owned restricted land, and any future business opportunity may be lost if vendors want to avoid possible dual-taxation concerns on the restricted lands. As

a result, the Citizens who own these lands will lose out on lease and other payments that were being paid by lessees under a Bureau of Indian Affairs approved lease.

F. The Nation asserts that the imposition of its sales tax under Nation law should preempt any State sales tax being assessed on business activity occurring, generally, on Reservation land, but, specifically, on Citizen-owned restricted lands. But a resolution of this issue will likely only be resolved through litigation, which could take years, or through an intergovernmental agreement or compact, which is not likely with the current State Governor. And, more broadly, the impact of the *McGirt* ruling affirming the continued existence of the Nation's Reservation will result in opportunities for the Nation to increase its revenue base by taxing various other activity and individuals within the Nation's jurisdiction. However, the development of new taxation law and policy based on the Reservation status (including litigation challenging the Nation's taxation authority) will also take time.

G. In the interest of proposing a short-term resolution to help Citizens keep businesses on their restricted lands, and without waiving any right of the Nation to assert its full taxation authority over the entire Reservation, the National Council finds it to be in the best interest of the Nation to amend the Nation's Sales Tax Code to provide vendors with a credit against the Nation's sales taxes when those vendors are also paying a State sales tax to the Oklahoma Tax Commission. This credit will not apply to vendors who are Nation Citizens or to any businesses owned by the Nation located within the Reservation because, under Federal law, the State sales tax is not applicable to Nation Citizens or Nation owned businesses.

H. The Nation's sales tax credit will also be conditioned on the vendor in the Reservation exempting the collection of any State sales tax on Nation Citizens who provide proof of enrollment with the Nation. In such instances, the vendor shall collect only the Nation's sales tax on those Citizens.

I. The Nation's Tax Commissioner has also provided for certain amendments to be enacted to the Sales Tax Code to clarify that sales tax shall be collected on sales of CBD and medical marijuana products in the Reservation and to provide additional amendments regarding certain licenses issued by the Tax Commission.

SECTION TWO. AMENDMENTS. 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 for the Muscogee (Creek) Nation, the Attorney General is 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 of 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 THREE. AMENDMENT. MCNCA Title 36, § 4-102 shall be amended to read as follows:

A. “Business enterprises” shall mean any activity engaged in or caused to be engaged in by any person with object of gain, benefit or advantage, either direct or indirect by sales of goods or items of value, including trade, commerce, manufacture, power production, or any other productive activity such as extraction, processing, assembly, construction, transportation, and transmission.

B. “Cannabidiol” or “CBD” shall mean a nonpsychoactive component derived from the cannabis plant, especially *Cannabis sativa* or *C. indica*, or produced synthetically, typically used as treatment for epilepsy and marketed as a dietary supplement for the management of chronic pain, inflammation, and anxiety.

CB. “Consumer” shall mean and include any person who receives or comes into possession of goods or items of value from a vendor upon a sale of same.

CD. “Current state sales tax” shall mean the amount of the Oklahoma state sales tax required to be collected pursuant to 68 O.S. § 1354 as of September 30, 2000, and shall not be affected by any changes thereto which may be enacted by the state legislature.

CE. “Current Tribal sales tax” shall mean the amount of the sales tax required to be collected pursuant to Title 36, § 4–103, as the same may be amended by the National Council from time to time.

CF. “Fair market value” shall mean a fair sales price for the good or item. A price agreed upon by interested parties during the completion of the sale by trade, barter or exchange is prima facie evidence of a fair sales price.

CG. “Fireworks” shall mean any composition or device for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and which is defined as common or special fireworks by the United States Department of Transportation (DOT). The term “fireworks” shall not include toy cap pistols and caps, blank cartridges, railroad flares and model rockets.

CH. “Goods” or “items of value” shall mean any tangible personal property, **including, but not limited to, CBD, Medical Marijuana, and all other forms of marijuana so long as such goods are lawful under the laws of the Nation.**

CI. “Gross receipts” or “gross proceeds” shall mean the total amount of consideration for the sales of any items of value or goods taxable under this chapter, whether the consideration is in money or otherwise. “Gross receipts” or “gross proceeds” shall include, but not be limited to:

1. Cash paid;
2. Any amount for which payment is charged, deferred, or otherwise to be made in the future, regardless of the time or manner of payment;
3. Any amount for which credit or a discount is allowed by the vendor; or
4. Any value of a trade-in or other property accepted in-kind by the vendor as consideration. Provided, that for purposes of calculating the amount of gross receipts, no deduction shall be made for cost of the goods or items of value sold, labor service performed, interest paid, or losses, or of any expenses, whatsoever, whether or not the goods or items of value sold were produced, constructed, fabricated, processed, or otherwise assembled for or at the request of the consumer as part of the sale.

J. “Medical Marijuana” shall mean marijuana, as defined under MCNCA Title 14, § 2-501.W, that is grown, processed, dispensed, tested, possessed, or used for medical purposes in accordance with applicable laws of the Nation.

K. “Person” shall mean and include any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity or other identifiable entity to which this Sales Tax Code can be applied.

L. “Sale” and its derivatives, shall mean any transfer of ownership for consideration from a vendor to any person no matter how characterized, not including the payment of salaries or wages, or payment for personal services to an independent contractor.

M. “Sales for resale” shall mean sales of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it either in its present form or as an attachment to or as an integral part of other tangible personal property.

N. “Sales tax” shall mean a compulsory payment levied on the sales price on all items of value or goods, as further defined herein, for the support of the government of the Muscogee (Creek) Nation.

O. “Special event” or “short term event” shall mean activities organized by the Muscogee (Creek) Nation of ten (10) days or less duration which activities are not organized for the sole purpose of selling goods.

P. “Territorial jurisdiction” means the territorial jurisdiction of the Muscogee (Creek) Nation as defined in Title 27, § 1–102 of the Code of Laws of the Muscogee (Creek) Nation, **including, but not limited to, all land within the exterior boundaries of the Muscogee (Creek) Nation Reservation.** ~~except that any such individual restricted or trust land which is the subject of a valid business lease as of September 30, 2000, shall not be deemed within the Muscogee (Creek) Nation territorial jurisdiction solely for~~

~~purposes of this Sales Tax Code until the date immediately following the expiration or termination of such leases.~~

QQ. “Vending machine” shall mean any machine or device which, upon the payment or insertion of money (or tokens which have been purchased for money), a good or item of value as defined by subsection G of this section is dispensed. It shall not include any machine or device which dispenses only exempt goods as defined under Title 36, § 4-106.

RP. “Vendor” shall mean and include any person who in the ordinary course of business sells any goods or items of value to another, whether such sale would be described as a “wholesale” or “retail” sale. A sale is “by” a particular vendor if that vendor will receive at least fifty-one percent (51%) of the net income or loss from the sale.

SECTION FOUR. AMENDMENT. MCNCA Title 36, § 4-106 shall be amended to read as follows:

§ 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 **from January through December** ~~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)~~ **fifty dollars (\$50.00)** 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 **from January through December** ~~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)~~ **one hundred dollars (\$100.00)** and shall be in lieu of sales taxes and applicable sales reports otherwise required under this title. **And such licensees are required to pay all the Sales Tax.**

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.~~

~~CD. 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.~~

SECTION FIVE. NEW LAW. The following new law 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 new law and its inclusion in pocket parts of the Code of Laws for the Muscogee (Creek) Nation, the Attorney General is 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 of the Code of Laws and; (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law, without further National Council approval:

§ 4-111. Credit for State Sales Tax Collected

A. Credit. A credit against the current tribal sales tax required to be collected under Title 36, §§ 4-103 and 4-104 shall be granted to any licensed business or vendor located within the Nation's territorial jurisdiction when such licensed business or vendor is also being assessed the current state sales tax. This credit must be directly passed on to the consumer at the point of sale by exempting from collection the current tribal sales tax.

B. Other Requirements. The credit against the current tribal sales tax provided in subsection 4-111.A shall only apply to licensed businesses or vendors who exempt enrolled citizens of the Muscogee (Creek) Nation from the current state sales tax. In such situations, a citizen of the Muscogee (Creek) Nation, upon providing proof of enrollment, shall only be assessed the full current tribal sales tax at the point of sale. This credit will not apply to vendors who are Muscogee (Creek) Nation citizens or to any businesses owned by the Muscogee (Creek) Nation located within the Reservation as the current state sales tax is not applicable to Muscogee (Creek) Nation citizens or Muscogee (Creek) Nation owned businesses. The Tax Commissioner shall determine the appropriate administrative policies and procedures that will be used to enforce the provisions under this Chapter.

C. Proof. To be allowed the credit authorized by subsection 4-111.A, a vendor must submit to the Tax Commissioner: (i) proof of the amount of the current state sales tax collected, and (ii) proof that the credit allowed herein has been passed on to the consumer. The sufficiency of both items of proof shall be a matter of discretion of the Tax Commissioner. A statement of the amount of the credit allowed and any proof thereof which may be required by the Tax Commissioner shall be provided to the Tax Commissioner together with or as a part of the sales tax report required by Title 36, § 4-108.

SECTION SIX. 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 27TH day of August, 2022.

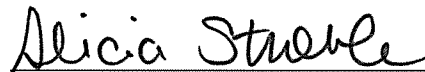
IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



William Lowe, Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

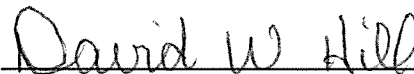
I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Sixteen members with **Sixteen** members attending this meeting on the **27th** day of **August, 2022** and that the above is in conformity with the provisions therein adopted by a vote of **15** 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.



Alicia Stroble, Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this 31st day of August, **2022** to the above Law, **NCA 22-092** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.



David W. Hill, Principal Chief
Muscogee (Creek) Nation

