

TITLE 36. TAXATION AND REVENUE

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Historical and Statutory Notes

NCA 01-136, §§ 10B. and 10C., provide:

“B. Implied repealer. This Act is intended to constitute the entire and complete Muscogee (Creek) Nation Tax Code, subject to future amendments thereof. All laws or portions thereof that authorize taxation by the Muscogee (Creek) Nation or that involve the Tax Commissioner, and that are not expressly amended or expressly repealed by this Act, are hereby repealed. All laws or portions thereof that are inconsistent with this Act are hereby repealed.

“C. No revival of other laws. Repeal by this Code of any law, ordinance or resolution or any parts of law, ordinance or resolution shall not have the effect of reviving any prior law, ordinance or resolution theretofore repealed or suspended by such repealed Code, nor shall this repeal have the effect of nullifying any regulation of the Tax commissioner issued under previous ordinances or laws which is authorized by this Code, nor shall this repeal have the effect of interrupting the term of the current Tax Commissioner, nor shall this repeal have the effect of interrupting any license issued by the Tax Commissioner or any responsibilities thereunder.”

Cross References

Non-profit corporations, franchise tax, see Title 3, § 2-101.
 Profit-making corporations, franchise tax, see Title 3, § 1-101.

CHAPTER 1. MUSCOGEE (CREEK) NATION TAX COMMISSION

Section

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- 1-109. Severability of provisions.

Historical and Statutory Notes

NCA 01-136, § 2, §§ 101, 102, provide:

“Section 101. Findings
 “The National Council finds that:

“A. Under the Constitution of the Muscogee (Creek) Nation, the National Council may legis-

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late upon matters to become Laws of the Nation, including:

“1. To promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of citizens of the Muscogee (Creek) Nation. [Article VI, Section 7(a)].

“2. To create authorities with attendant powers to achieve objectives allowed within the scope of the Constitution. [Article VI, Section 7(i)].

“3. To lay and collect taxes within the Muscogee (Creek) Nation territorial jurisdiction from whatever source derived. [Article VI, Section 7(h)].

“B. The future of the Muscogee (Creek) Nation and the welfare of its people depend on diversified economic development and entry

into businesses that provide employment and financial independence.

“C. The present needs of the Muscogee (Creek) people include a need to broaden its resource base through a uniform tax revenue system.

“D. The Muscogee (Creek) Nation must establish standards of business practices with attendant responsibilities and provide a method to regulate licensing within the Muscogee (Creek) Nation territorial jurisdiction.

“E. The Muscogee (Creek) Nation must become self-sufficient in all its economic affairs, as reliance on outside resources can be adverse to the goal of economic independence of this sovereign nation.

“**Section 102. Purpose.** It is the purpose and intent of this Act to provide revenues for essential governmental services of the Muscogee (Creek) Nation.”

§ 1–101. Short title and codification

This Code shall be known and may be cited as the Muscogee (Creek) Nation Tax Code, and shall be codified as Title 36 of the Muscogee (Creek) Nation Code of Laws.

[NCA 01–136, § 103, eff. Aug. 1, 2001.]

Historical and Statutory Notes

Derivation:

NCA 86–08, § 104.

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 1–102. Definitions

The following words and phrases when used in this title shall, for the purposes of this title, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. “Commission” means the Muscogee (Creek) Nation Tax Commission.

B. “Commissioner” means the Tax Commissioner.

C. “Community” means a community organized and chartered by the Muscogee (Creek) Nation pursuant to applicable law of the Muscogee (Creek) Nation.

D. “Hearing de novo” means a new hearing or a hearing for the second time contemplating an entire trial in the same manner in which the matter was originally heard and a review of previous hearings.

E. “License” means authorization by the Muscogee (Creek) Nation Tax Commission to do an act, which without permission would be illegal, including authorization to a person, group, community, firm, or corporation to pursue some occupation to carry on some business subject to regulation under the jurisdiction of the Muscogee (Creek) Nation.

F. “Licensee” means a person who has obtained a license from the Muscogee (Creek) Nation Tax Commissioner.

G. “Nation” means the Muscogee (Creek) Nation.

H. “National Council” means the National Council of the Muscogee (Creek) Nation.

I. “Permit” means a written warrant issued by a person in authority empowering the grantee to do some act not forbidden by the Muscogee (Creek) Nation but not allowable without such authority.

J. “Shall” is used in this title as imposing an obligation to act.

K. “Taxes” mean pecuniary charges levied for the privilege of carrying on economic activity and shall mean any tax which is payable to, collectible by, or administered by the Muscogee (Creek) Nation.

L. “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.

[NCA 01–136, § 104, eff. Aug. 1, 2001.]

Historical and Statutory Notes

Derivation:

NCA 86–08, § 105.

§ 1–103. Creation of Muscogee (Creek) Nation Tax Commission

There is hereby created the “Muscogee (Creek) Nation Tax Commission” for the orderly development, administration, regulation of taxation, and collection of taxes.

[NCA 01–136, § 105, eff. Aug. 1, 2001.]

Historical and Statutory Notes

Derivation:

NCA 86–08, § 201.

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 1–104. Powers and duties of the Tax Commissioner

A. Administration. The Muscogee (Creek) Nation Tax Commissioner is hereby invested with the power and charged with the duty to administer and enforce the Muscogee (Creek) Nation Tax Code, including without limitation, the following powers:

1. The leasing, furnishing, and equipping any building or land required for the operation of this Title;
2. The buying or leasing of all plants and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this title;

3. The employment of managers and also every officer, investigator, clerk, or other employee required for the operation or carrying out of this title and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

4. The assessment, calculation and collection of all taxes, fees and penalties assessed in accordance with this title or other applicable law of the Nation;

5. The issuance of receipts for collected taxes;

6. The denial or approval of applications for licenses required by this title and the issuance of such licenses;

7. All necessary powers and control over entities subject to the provisions of this title, or of those entities over which specific control is granted to the Commission by law of the Muscogee (Creek) Nation; and

8. The exercise of all other authority delegated or conferred upon the Tax Commissioner by this section and this title and by any other applicable law of the Nation, or as may be reasonably necessary in the administration or enforcement of any tax law of the Nation.

B. Enforcement. The Commissioner is hereby authorized to seek enforcement of violations of the Muscogee (Creek) Nation Tax Code through any legally available means, including without limitation the following:

1. Make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer, upon reasonable notice, during normal business hours, at any other time agreed to by the said taxpayer, or at any time pursuant to a search warrant signed by the District Court of the Muscogee (Creek) Nation;

2. Administer oaths, conduct hearings and issue subpoenas to compel the attendance of witnesses and the production of any books, records and papers of any taxpayer, persons, firm, association or corporation relating to the enforcement of the Muscogee (Creek) Nation tax laws;

3. Examine under oath, either orally or in writing any taxpayer or any principal agent, master, servant, officer, or employee of any taxpayer, or any other witness in respect to any matter relative to the Muscogee (Creek) Nation tax laws;

4. Appoint one or more investigators or prosecuting officers who, under its discretion, shall perform such duties as it may require and who shall be paid such salaries, fees, and expenses as the Commission may fix.

5. Deputize law enforcement officials including the Lighthorse, the Bureau of Indian Affairs Police, and any officers who have been cross-commissioned with the Muscogee (Creek) Nation for the purpose of enforcement of the tax laws of the Muscogee (Creek) Nation;

6. Report violations of any applicable Muscogee (Creek) Nation laws to Muscogee (Creek) Nation law enforcement;

7. Report violations of any applicable state laws to appropriate state enforcement authorities if related to implementation and enforcement of the Muscogee (Creek) Nation Tax Code;

8. Bring actions on behalf of the Nation in the Courts of the Muscogee (Creek) Nation for the collection of taxes, penalties and interest, and the enforcement of the tax laws of the Muscogee (Creek) Nation and defend against actions brought in said Courts against the Tax Commissioner or relating to the implementation or enforcement of the tax laws of the Nation.

C. Delegation. The Commissioner is hereby authorized to delegate his/her authority under this section to such employees of the Muscogee (Creek) Nation Office of the Tax Commission as may be necessary to administer and enforce this title.

[NCA 01–136, § 106, eff. Aug. 1, 2001.]

Historical and Statutory Notes

Derivation:

NCA 86–08, § 206.

NCA 92–71, § 104.

Library References

Indians ⇄225.

Westlaw Topic No. 209.

C.J.S. Indians §§ 140 to 149.

§ 1–105. Rulemaking authority

A. Promulgation and enforcement of regulations. The Tax Commissioner shall have the authority to prescribe, promulgate, and enforce, without National Council approval, such written rules and regulations as may be necessary to administer and enforce this title, including without limitation rules and regulations for its internal operational procedures, for the collection of taxes, for the making and filing of reports, for the computation of taxes, for the filing of any reports or returns required by any Muscogee (Creek) Nation tax laws, for granting and denying applications for licenses, for hearings and appeals and for such other purposes as shall be reasonably necessary for the efficient performance of its duties, or as may be required or permitted by law; provided that said rules and regulations may not be inconsistent with this title.

B. Filing requirements for regulations. No rule or regulation of the Tax Commission shall be of any force or effect until and unless a certified copy of said rule or regulation bearing the signature of the Tax Commissioner and the official seal of the Tax Commissioner shall have been filed for record in the office of the National Council Secretary and the office of the Clerk of the Muscogee (Creek) Nation Courts;

C. Judicial notice of regulations. The Courts of the Muscogee (Creek) Nation shall take judicial notice of all rules and regulations of the Tax Commission promulgated pursuant to the tax laws of the Muscogee (Creek) Nation.

[NCA 01–136, § 107, eff. Aug. 1, 2001.]

Historical and Statutory Notes

Derivation:

NCA 86–08.
NCA 92–71, § 204.

Cross References

Cigarettes and tobacco products, rules and regulations, see Title 36, § 5–104.

Library References

Indians ⇌225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 1–106. Seal

The Tax Commissioner is authorized, directed to acquire, and use a seal which shall be circular in form with the words “TAX COMMISSION—MUSCOGEE (CREEK) NATION” around the edge thereof, and the word “Seal” in its center. The seal shall be impressed upon the originals or certified copies of all licenses, orders, rules, regulations and other official documents of the Commission as evidence of their authenticity and authority.

[NCA 01–136, § 108, eff. Aug. 1, 2001.]

Historical and Statutory Notes

Derivation:

NCA 86–08, § 202.

Library References

Indians ⇌225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 1–107. Background checks and bonding

Background checks and bonding background checks shall be performed on all Tax Commission personnel and bonding shall be required of all Tax Commission personnel responsible for handling tax monies including, but not limited to taxes, penalties and interest collected.

[NCA 01–136, § 109, eff. Aug. 1, 2001.]

Library References

Indians ⇌225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 1–108. Deposit into Muscogee (Creek) Nation Treasury

A. Tax revenues collected by the Muscogee (Creek) Nation Tax Commission pursuant to this title shall be promptly transferred to the Muscogee (Creek) Nation Controller for deposit into the General Fund and shall be available for appropriation by the National Council for the provision of essential government functions and services, including the public welfare and such other matters as determined by the National Council to be in the best interests of the Muscogee

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Title 36, § 1–109

(Creek) Nation and its citizens, subject to requirements for earmarking of certain tax revenue set forth in Title 36, § 3–113 and Title 36, § 5–107.

B. All property, whether real or personal, and all moneys acquired, administered, possessed, or received by the Tax Commission shall be the property of the Muscogee (Creek) Nation.

[NCA 01–136, § 110, eff. Aug. 1, 2001.]

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 1–109. Severability of provisions

The provisions of this title are hereby deemed to be severable and should any part of this title be held to be invalid by final judgment of the Muscogee (Creek) Nation District Court, the remainder shall be severable from such invalid provisions and shall remain in full force and effect.

[NCA 01–136, § 111, eff. Aug. 1, 2001.]

CHAPTER 2. FUEL TAX CODE [RESERVED]

Chapter Two has been reserved by NCA 01–136, § 2 for amendment and codification of NCA 95–89, as amended by NCA 97–87.

CHAPTER 3. MOTOR VEHICLE TAX AND LICENSE CODE

Section

- 3-101. Citation.
- 3-102. Definitions.
- 3-103. Registration eligibility.
- 3-104. Certificate of title requirement.
- 3-105. Registration application.
- 3-106. Registration tax.
- 3-107. Annual registration fee.
- 3-108. License plate.
- 3-109. Operation of motor vehicle in the Muscogee (Creek) Nation.
- 3-110. Sale of vehicle with Muscogee (Creek) Nation title to non-Indian.
- 3-111. Recognition of foreign titles and registrations.
- 3-112. Penalties.
- 3-113. Use of tax revenues.
- 3-114. Intergovernmental agreements; authority.

Historical and Statutory Notes

NCA 01-136, § 4, §§ 301, 302, provide:

“Section 301. Findings

“The National Council finds that:

“A. Numerous Muscogee citizens live in rural parts within the political jurisdiction of the Muscogee (Creek) Nation as defined by the Constitution of the Muscogee (Creek) Nation, Article I., Section 2, where the road and bridge infrastructure is insufficient to allow access or productive use of lands which require creation or repair.

“B. Public parking lots within Muscogee government facilities are in need of repair.

“C. The Muscogee (Creek) Nation has certain responsibilities for rights-of-way through the area within the political jurisdiction of the Muscogee (Creek) Nation.

“D. The Muscogee (Creek) Nation is in need of revenues for the purpose of funding for construction and improvement of roads, construction and improvement of public parking lots, and public safety within its political jurisdiction.

“Section 302. Purpose

“The purpose is to register certain motor vehicles within the political jurisdiction of the Muscogee (Creek) Nation and raise revenue for the Nation.”

Cross References

Traffic Code, see Title 22, § 1-101 et seq.

§ 3-101. Citation

This chapter of Title 36 shall be known and cited as the Muscogee (Creek) Nation “Motor Vehicle Tax and License Code.”

[NCA 00-174, § 103, approved Nov. 18, 2000; amended by NCA 01-136, § 303, eff. Aug. 1, 2001.]

Library References

Indians ⇄225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-102. Definitions

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. “All terrain vehicle” shall mean a motorized vehicle manufactured and used exclusively for off-highway use which is sixty (60) inches or less in width,

with an unladen dry weight of one thousand five hundred (1500) pounds or less, traveling on two (2) or more low-pressures tires.

B. "Commercial vehicle" shall mean any vehicle used primarily for the transportation of persons or goods in the ordinary course of trade or business.

C. "Eligible vehicle" shall mean any personal vehicle, commercial vehicle, motorcycle, recreational vehicle, trailer, farm truck, or all terrain vehicle, which is principally garaged within the political jurisdiction of the Muscogee (Creek) Nation and title to which is held by: (i) the Muscogee (Creek) Nation, (ii) a chartered community of the Muscogee (Creek) Nation which is located in the political jurisdiction of the Muscogee (Creek) Nation or (iii) any enrolled member of the Muscogee (Creek) Nation who resides within the political jurisdiction of the Muscogee (Creek) Nation. An "eligible vehicle" shall not include a salvage vehicle.

D. "Farm trailer" shall mean any vehicle owned by a farmer and used primarily for the purpose of transporting farm products to market or for the purpose of transporting to the farm material or things to be used thereon, and not for commercial or industrial purposes.

E. "Farm truck" shall mean any vehicle equipped with four (4) or more wheels and a cargo area for the conveyance of property that is used primarily for agricultural purposes, but not for commercial or industrial purposes. Vans and sport utility vehicles may not carry a "farm truck" tag.

F. "Motorcycle" shall mean any two (2) or three-wheeled personal vehicle.

G. "Person" shall mean any natural person or legal entity legally competent to hold title to a motor vehicle.

H. "Personal vehicle" shall mean any vehicle having four (4) or more wheels, including but not limited to cars, trucks, vans and sport utility vehicles; provided however, the definition of personal vehicle shall not include a commercial vehicle as defined in subsection A of this section, a recreational vehicle as defined in subsection I of this section or a farm truck as defined in subsection D of this section.

I. "Physically disabled driver" shall mean any person who is an enrolled member of the Muscogee (Creek) Nation and who generally meets the definition of a physically disabled person under Oklahoma law, as may be further modified by the Tax Commissioner of the Muscogee (Creek) Nation.

J. "Rebuilt vehicle" shall mean any salvage vehicle which has been rebuilt and inspected for the purpose of registration and title with another Tribe or state.

K. "Recreational vehicle" shall mean any vehicle that is equipped to serve as temporary living quarters for recreational, camping or travel purposes and is used solely as a family or personal conveyance.

L. "Salvage vehicle" shall mean any vehicle which is within the last ten (10) model years and has been damaged by collision or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of its fair market value, immediately prior to the damage.

M. “Senior citizen” shall mean any person who is an enrolled member of the Muscogee (Creek) Nation who has reached the age of sixty-five (65) and is licensed by the State of Oklahoma to drive an eligible vehicle.

N. “Trailer” shall mean any vehicular portable structure built on a chassis which is not propelled by its own power but is towed by another vehicle with a width not exceeding eight (8) feet in travel mode and overall length not exceeding forty (40) feet, including the hitch or coupling, whether used for towing property or livestock or as a temporary dwelling for travel or recreational use.

O. “Vehicle” shall mean any wheeled conveyance for carrying persons or property capable of being propelled under its own power through the use of an electric engine or internal combustion engine greater than fifty (50) cubic centimeters, designed primarily for use on roads and/or highways and equipped with brakes, headlights, tail lights, brake lights, a horn, turn signals and a rear-view mirror, the ownership of which is reflected on a Certificate of Title. [NCA 00-174, § 105, approved Nov. 18, 2000; amended by NCA 01-136, § 304, eff. Aug. 1, 2001; NCA 04-089, § 2, approved July 1, 2004; NCA 06-075, § 1, eff. May 8, 2006, approved May 8, 2006; NCA 08-162, § 1, approved Oct. 2, 2008.]

§ 3-103. Registration eligibility

A. Muscogee (Creek) Nation. The Muscogee (Creek) Nation shall register all eligible vehicles to which it holds title with the Muscogee (Creek) Nation Tax Commission.

B. Chartered communities. Any chartered community of the Muscogee (Creek) Nation which holds title to an eligible vehicle shall have the option to apply for registration of said eligible vehicle with the Muscogee (Creek) Nation Tax Commission, instead of registration with another governmental entity.

C. Citizens. Any Muscogee (Creek) Nation citizen who resides within the political jurisdiction of the Muscogee (Creek) Nation and who holds title to an eligible vehicle shall have the option to apply for registration of said vehicle with the Muscogee (Creek) Nation Tax Commission, instead of registration with another governmental entity; provided that failure of such person to apply for registration of an eligible vehicle with the Muscogee (Creek) Nation Tax Commission or with another governmental entity within thirty (30) days after purchasing or obtaining possession of said motor vehicle or within twenty (20) days of expiration of the previous tag shall subject said person to penalties as provided in subsection B of Title 36, § 3-112.

[NCA 00-174, § 106, approved Nov. 18, 2000; amended by NCA 01-136, § 305, eff. Aug. 1, 2001.]

Library References

Indians ☞226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-104. Certificate of title requirement

A. Title. Prior to the registration of an eligible vehicle with the Muscogee (Creek) Nation for the first time by a specific owner of the vehicle, the owner

shall apply to the Tax Commissioner, on such form as the Commissioner shall by rule direct, for a Muscogee (Creek) Nation Vehicle Certificate of Title for said vehicle. The applicant shall furnish proof of purchase from a licensed new or used car dealer, or a properly endorsed Vehicle Certificate of Title issued by another jurisdiction, or in the case of an applicant who has acquired title to a vehicle already registered with the Muscogee (Creek) Nation Tax Commission, a properly endorsed Muscogee (Creek) Nation Vehicle Certificate of Title.

B. Original, transfer, and duplicate titles. Upon proper application and payment of all fees and taxes, the Tax Commissioner shall issue an Original Muscogee (Creek) Nation Vehicle Certificate of Title to the first purchaser of a vehicle from a new vehicle dealer, a Transfer Muscogee (Creek) Nation Certificate of Title to a second or subsequent owner of a vehicle whether purchased from an individual or dealer, and a Duplicate Muscogee (Creek) Nation Vehicle Certificate of Title to the owner of record to replace a lost, stolen or mutilated original or transfer title. No Muscogee (Creek) Nation title shall be issued on a salvage title issued by another tribe or state. The Muscogee (Creek) Nation shall not issue any titles on salvage vehicles. Notice of liens against said vehicle shall be placed upon said title either by submission of a valid lien entry form from a lending institution or upon receipt of a title issued by another tribe or state with a valid lien filed upon the face of the title.

C. Fee. The Commissioner shall charge a fee of five dollars (\$5.00) for issuing each original, transfer or duplicate Muscogee (Creek) Nation Vehicle Certificate of Title. A receipt will be given for said fee.

[NCA 00-174, § 107, approved Nov. 18, 2000; amended by NCA 01-136, § 306, eff. Aug. 1, 2001; NCA 04-089, § 2, approved July 1, 2004.]

Library References

Indians ☞ 225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-105. Registration application

A. Documents. Each applicant for vehicle registration with the Muscogee (Creek) Nation shall present upon application the following documents:

1. The applicant's properly endorsed Muscogee (Creek) Nation Vehicle Certificate of Title; or an application for a Muscogee (Creek) Nation Vehicle Certificate of Title if the applicant has not previously obtained such Certificate.
2. Valid United States state or Territorial driver's license or other documents prescribed by the Commissioner showing applicant's residence within the boundaries of the political jurisdiction of the Muscogee (Creek) Nation;
3. If the applicant is an individual, a copy of the applicant's Muscogee (Creek) Nation membership card, along with a signed statement consenting to the Tax Commissioner's release of information confirming his or her status as a Muscogee (Creek) Nation citizen to a subsequent purchaser upon request by the purchaser; and,
4. Proof of current liability insurance policy or bond covering any liability for an accident involving such motor vehicle, to limit, exclusive of interest and

costs of: (i) Not less than ten thousand dollars (\$10,000) because of bodily injury to or death to any one person in any one accident, (ii) not less than twenty thousand dollars (\$20,000) of bodily injury to or death of two (2) or more persons in any one accident, and (iii) not less than ten thousand dollars (\$10,000) because of injury to or destruction of property of others in any one accident.

B. Approval. Upon approval of the registration application and payment of all applicable fees and taxes by the applicant, the Tax Commissioner shall provide to the applicant a Muscogee (Creek) Nation certificate of registration, tag and decal.

C. Denial. The Commissioner shall have the authority to deny registration to any applicant when the application information is determined to be insufficient to meet requirements for registration, fraudulent or incorrect or the applicant has failed to pay all applicable fees and taxes. The Commissioner shall notify the applicant of the denial of the registration by certified mail.

D. Revocation. If the Commissioner approves an application for registration and fraudulent information is subsequently discovered, the Commissioner shall have the authority to revoke the registration. The Commissioner shall notify the applicant of the revocation of the registration by certified mail.

[NCA 00-174, § 108, approved Nov. 18, 2000; amended by NCA 01-136, § 307, eff. Aug. 1, 2001; NCA 07-146, § 2, eff. May 23, 2007.]

Library References

Indians ⇄226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-106. Registration tax

A. Registration tax charge. A one-time registration tax shall be charged for the registration of any eligible vehicle not previously registered with the Muscogee (Creek) Nation by the specific applicant, including the registration of an eligible vehicle registered with the Muscogee (Creek) Nation by a previous owner/seller of the vehicle, as follows:

1. Registration tax on personal vehicles. A registration tax of one and one-half percent (1.5%) of the actual purchase price (A.P.P.) shall be charged for a personal vehicle, provided that the actual purchase price (A.P.P.) is not more than twenty percent (20%) above the average retail value and no more than twenty percent (20%) below the average retail value.

2. Registration tax on motorcycles. A registration tax of one and one-half percent (1.5%) of the actual purchase price (A.P.P.) shall be charged for registration of a motorcycle, provided that the actual purchase price (A.P.P.) is no more than twenty percent (20%) above the average retail value and no more than (20%) below the average retail value.

3. Registration tax on commercial vehicles. A registration tax equal to one-half (1/2) of the amount of the tax imposed on personal vehicles shall be charged for registration of a commercial vehicle, provided that the owner of said vehicle shall sign an affidavit, under oath, in such form as shall be

prescribed by the Tax Commissioner, that the vehicle will be used primarily for trade or business purposes, and shall either: (i) Affix the federal employer identification number of said business to the affidavit, or (ii) cause the name of the business to be permanently affixed on each side of said vehicle in letters or numerals of at least one (1) inch in height and in a color contrasting with the color of said vehicle. Proof of trade or business purposes shall be required each year for subsequent registrations.

4. Registration tax on recreational vehicles. A registration tax equal to one-half (1/2) of the amount of the tax imposed on personal vehicles shall be charged for registration of a recreational vehicle.

5. Registration tax on all terrain vehicles. A registration tax of one and one-half percent (1.5%) of the actual purchase price (A.P.P.) shall be charged for an all terrain vehicle, provided that the actual purchase price (A.P.P.) is not more than twenty percent (20%) above the average retail value and no more than twenty percent (20%) below the average retail value. However, if the all terrain vehicle is used for agricultural/farm purposes and the citizen provides an agricultural exemption card to the Tax Commission, then the all terrain vehicle shall be exempt from registration tax.

B. Registration tax for physically disabled drivers. A registration tax equal to one half (1/2) of the amount of the tax imposed on personal vehicles shall be charged for registration of a vehicle owned and operated by a physically disabled driver as defined in this chapter. Eligible persons are allowed to register not more than two (2) vehicles under this section.

C. Registration tax for senior citizens. A registration tax equal to one-half (1/2) of the amount of the tax imposed on personal vehicles shall be charged for registration of a vehicle owned and operated by a senior citizen as defined in this chapter. Eligible persons are allowed to register not more than two (2) vehicles under this section.

D. No registration tax on farm trucks and commercial trailers. There shall be no registration tax levied on farm trucks, farm tractors or commercial trailers.

E. No registration tax for veterans. There shall be no registration tax levied on eligible vehicles owned by citizens of the Muscogee (Creek) Nation who present documentation that they are entitled to veteran status.

[NCA 00-174, § 109, approved Nov. 18, 2000; amended by NCA 01-136, § 308, eff. Aug. 1, 2001; NCA 06-075, § 2, eff. May 8, 2006, approved May 8, 2006; NCA 08-162, § 2, approved Oct. 2, 2008.]

Library References

Indians ☞ 225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-107. Annual registration fee

A. Regular fees. Unless subject to a special fee pursuant to subsection B, C, D or E of this section, there is hereby levied on every eligible vehicle which is registered with the Muscogee (Creek) Nation Tax Commission an annual

registration fee in accordance with the following schedule, provided that the registration fee on said vehicles previously registered with any other tribe or with any state shall be figured as if those vehicles had been registered with the Muscogee (Creek) Nation for an identical number of years:

1. Registered for 1–5 years: \$75.00
2. Registered for 6–10 years: \$55.00
3. Registered for 11–15 years: \$30.00
4. Registered for 15 or more years: \$15.00

B. Special fees for physically disabled drivers. Citizens of the Muscogee (Creek) Nation who qualify as physically disabled drivers as defined in this chapter shall be entitled to the amount of thirty dollars (\$30.00) for annual registration of not more than two (2) eligible vehicles.

C. Special fees for senior citizens. Citizens of the Muscogee (Creek) Nation who qualify as senior citizens as defined in this chapter shall be entitled to pay a special fee in the amount of thirty dollars (\$30.00) for annual registration of not more than two (2) eligible vehicles.

D. Special fees for veterans. Citizens of the Muscogee (Creek) Nation who present documentation that they are entitled to veteran status shall be entitled to pay a special fee for annual registration of not more than two (2) eligible vehicles as follows:

- i. Veterans only, special fee: \$15.00
- ii. Disabled veterans, special fee: \$11.50
- iii. Winners of medals for heroism in combat, special fee: \$5.00
- iv. Prisoners of war, special fee: FREE

E. Special fees for farm trucks. The annual registration fee on farm trucks shall be a special fee in the amount of thirty dollars (\$30.00) per registered vehicle.

F. Special fees for commercial trailers. The annual registration fee on commercial trailers shall be four dollars (\$4.00) per vehicle.

G. Special fees for all terrain vehicles. A one time registration fee on all terrain vehicles shall be ten dollars (\$10.00) per vehicle.

[NCA 00-174, § 110, approved Nov. 18, 2000; amended by NCA 01-136, § 309, eff. Aug. 1, 2001; NCA 06-075, § 3, eff. May 8, 2006, approved May 8, 2006; NCA 08-162, § 3, approved Oct. 2, 2008.]

Library References

Indians ⇄225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-108. License plate

A. Standard license plate. Each vehicle registered with the Muscogee (Creek) Nation shall be issued a license plate to be properly displayed on the rear of said vehicle. All license plates shall be in such form as described:

1. Each license plate shall be made of metal with white lettering on a red background, unless otherwise provided herein,

2. Each license plate shall bear the name Muscogee (Creek) Nation, unless otherwise provided herein,

3. Each license plate shall bear the Muscogee (Creek) Nation seal, unless otherwise provided herein,

4. Each license plate shall bear the word Oklahoma, unless otherwise provided herein,

5. Each license plate shall contain no more than five (5) characters, made up of numbers, letters or a unique combination of both, unless otherwise provided herein.

6. The identifying symbols shall be large and clear enough to be read by the unaided eye at a distance of not less than fifty (50) feet.

7. Each license plate shall provide a space for the placement of month and year decals on the upper left and the upper right corners of the license plate, respectively.

8. The license plates for each class of vehicles shall be distinctive and different from those assigned to other classes of vehicles.

B. License plates with special symbols or legends. The Commissioner may, at his/her discretion provide by rule or regulation for special symbols or legends to be placed upon personal vehicles license plates issued for the following classes of persons, provided that the Commissioner shall first require documentation that the owner of the vehicle is entitled to the special symbol or legend:

1. The physically handicapped,
2. Veterans of the armed forces,
3. Winners of selected medals for heroism in combat,
4. Past or present prisoners of war,
5. Parents whose child has been killed as a result of service in the armed forces, and
6. Past and present elected Tribal officials

C. Personalized license plates. The Commissioner may, at his/her discretion provide by rule or regulation for personalized license plates for personal vehicles upon request of the owner. Personalized license plates may be placed on personal vehicles in lieu of the regular tag. The Commissioner may charge additional fees for issuing personalized license plates. The Commissioner reserves the right to reject a request for a personalized license plate at any time without stating a reason. Personalized license plates shall contain no more than five (5) characters, made up of numbers, letters or a unique combination of both.

D. Muscogee (Creek) Nation government vehicles. The Commissioner shall issue without charge, appropriate titles, certificates of registration and license plates for any motor vehicle owned by the Muscogee (Creek) Nation or its agencies. Title to any such vehicles shall be in the name of the Muscogee (Creek) Nation and such vehicles may be disposed of only by action of the National Council. If the particular agency has been authorized to purchase and

dispose of property in the name of the agency by law of the National Council, the agency may hold title to a vehicle purchased through an authorized budget line item in its own name, and dispose of the vehicle pursuant to its authorized powers, unless the purchase was made from appropriated Tribal funds the vehicles may be declared surplus property and disposed of in accordance with Title 32, § 3-101 et seq.

E. Lost, mutilated or destroyed license plate or decal. In the event of loss, mutilation or destruction of a license plate or decal the owner of such registered vehicle shall file an affidavit showing such fact and obtain another plate or decal. The charge shall be five dollars (\$5.00) for each such plate or decal. In the event a license plate becomes so mutilated as to make its numbers, letters or decals unreadable, the owner/operator of the vehicle shall be subject to fine. Law enforcement shall have the authority to detain and cite any owner or operator of vehicles bearing such mutilated license plates.

[NCA 00-174, § 111, approved Nov. 18, 2000; amended by NCA 01-136, § 310, eff. Aug. 1, 2001.]

Cross References

Great seal and official flag, see Title 37, § 1-101 et seq.
Official seal, see Const. Art. I, § 3.

Library References

Indians ⇄226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-109. Operation of motor vehicle in the Muscogee (Creek) Nation

A. Driver's license. Every operator of a motor vehicle upon the public streets, roadways or highways in the political jurisdiction of the Muscogee (Creek) Nation shall have in their possession a currently valid United States state or territorial driver's license and shall exhibit such license to any law enforcement officer upon request.

B. Insurance.

1. Unless otherwise provided in this subsection, every owner or operator of a motor vehicle operated upon the public streets, roadways or highways in the political jurisdiction of the Muscogee (Creek) Nation shall maintain with some insurance company or surety company, a liability insurance policy or bond, to cover any liability for an accident involving such motor vehicle, to limit, exclusive of interest and costs of:

- a. Not less than ten thousand dollars (\$10,000) because of bodily injury to or death of two (2) or more persons in any one accident, and
- b. Not less than twenty thousand dollars (\$20,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and
- c. Not less than ten thousand dollars (\$10,000) because of injury to or destruction of property of others in any one (1) accident.

2. This requirement shall not apply to any operator if the owner of such motor vehicle has such insurance which covers the operator while he/she is operating the vehicle.

C. Insurance security verification form. Except as provided in subsection D of this section, every owner of a motor vehicle registered within the Muscogee (Creek) Nation shall carry in such vehicle at all times a current owner's security verification form listing the vehicle which has been issued by an insurance company or surety company and shall produce such form upon request for inspection by any law enforcement officer or representative of the Commissioner and, in the case of a collision, the form shall be shown upon request to any person affected by said collision.

D. Exemption from insurance security verification form requirement. The following shall not be required to carry an owner's or operator's security verification form or an equivalent form during operation of a motor vehicle and shall not be required to surrender such form for vehicle registration purposes:

1. Any vehicle owned or leased by the federal, state, territory or Tribal government, or any agency or political subdivision thereof;
2. Any vehicle bearing the name, symbol or logo of a business, corporation or utility on the exterior whose business, corporation or utility has a deposit, bond, self-insurance or fleet policy on file with the Tax Commissioner;
3. Any vehicle authorized for operations, pursuant to a permit number issued by the Interstate Commerce Commission; and
4. Any vehicle owned by a licensed used motor vehicle dealer and not regularly used upon the public highways.

[NCA 00-174, § 112, approved Nov. 18, 2000; amended by NCA 01-136, § 311, eff. Aug. 1, 2001.]

Library References

Indians ☞226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-110. Sale of vehicle with Muscogee (Creek) Nation title to non-Indian

Any sale of a vehicle with a valid Muscogee (Creek) Nation title from a Muscogee (Creek) Nation citizen to a non-member shall require the seller to provide a copy of his or her current CDIB or Muscogee (Creek) Nation membership cards to the purchaser. If the seller fails to provide this information upon sale, the Muscogee (Creek) Nation Tax Commissioner may provide information confirming the seller's status as a Muscogee (Creek) Nation citizen upon request of the purchaser.

[NCA 00-174, § 113, approved Nov. 18, 2000; amended by NCA 01-136, § 312, eff. Aug. 1, 2001.]

Library References

Indians ☞226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-111. Recognition of foreign titles and registrations

It shall not be unlawful by reason of this title for any person to possess or operate a motor vehicle within the political jurisdiction of the Muscogee

(Creek) Nation so long as the vehicle is properly registered and tagged by the jurisdiction in which such person resides in which the vehicle is principally garaged and such jurisdiction extends like or similar recognition to the vehicle tags, certificates of title and registrations issued by the Muscogee (Creek) Nation.

[NCA 00-174, § 114, approved Nov. 18, 2000; amended by NCA 01-136, § 313, eff. Aug. 1, 2001.]

Library References

Indians ⇄226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-112. Penalties

A. False or fraudulent information. Any Indian person who knowingly issues or promulgates false or fraudulent information in connection with either the security verification form or an equivalent form of an owner or operator shall be guilty of an offense and shall be subject to a fine not exceeding five hundred dollars (\$500.00) or imprisonment for not more than six (6) months or by both such fine or imprisonment.

B. Failure to register. Failure of the owner of an eligible vehicle to apply for a Muscogee (Creek) Nation certificate of title, certificate of registration, tag and decal within twenty (20) days of the date of expiration of a Muscogee (Creek) Nation tag shall result in the civil penalty of twenty-five cents (\$0.25) per day beginning on the twenty-first (21st) day. This penalty shall not exceed two (2) times the registration fee for the vehicle. Any vehicle not registered within three (3) months after the expiration of the previous Muscogee (Creek) Nation registration and being operated upon any public street or highway is hereby declared contraband and shall be subject to seizure and sale.

C. Waiver of penalties for failure to register. The Commissioner shall have the authority to waive penalties for failure to register a vehicle, in cases where such vehicle is proven to have been inoperable during the registration period. Proof of inoperability may be by, but is not limited to, submission of parts or repair receipts or such other evidence deemed appropriate by the Tax Commission.

D. Operation of vehicle; criminal offense. Any Indian person who operates, or allows to be operated a motor vehicle owned by him/her, in violation of the provisions of this chapter, shall be guilty of a misdemeanor and shall be subject to a fine not exceeding two hundred fifty dollars (\$250.00), or imprisonment for not more than thirty (30) days, or both such fine and imprisonment.

E. Operation of vehicle; public nuisance; seizure. Any motor vehicle operated in violation of the provisions of this chapter shall be considered a public nuisance. The Commissioner shall seize any Muscogee (Creek) Nation license plate placed upon such vehicles and not allow the return or re-registration of the vehicle until a security verification form is filed with the Commissioner or other action as ordered by the Commissioner is taken to verify that such vehicle will not be used in violation of this section. If such vehicle has been in an accident, any law enforcement officer shall impound such vehicle until a

security verification form or other appropriate action as ordered by the Commissioner is filed with the Commissioner. If no form is filed within six (6) months, the Attorney General shall file appropriate forfeiture proceedings to forfeit such vehicle to the Nation.

[NCA 00-174, § 115, approved Nov. 18, 2000; amended by NCA 01-136, § 314, eff. Aug. 1, 2001.]

Cross References

Administrative enforcement proceeding, see Title 36, § 6-103.

Library References

Indians ⇄226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-113. Use of tax revenues

The tax revenue collected pursuant to the Motor Vehicle Code shall be earmarked for funding of education, public health and welfare, public safety, construction and improvement of roads and parking lots within the jurisdiction of the Muscogee (Creek) Nation, and such other matters as determined by the National Council to be in the best interest of the Muscogee (Creek) Nation and its citizens.

[NCA 00-174, § 116, approved Nov. 18, 2000; amended by NCA 01-43, § 1, eff. May 1, 2001; NCA 01-136, § 315, eff. Aug. 1, 2001; NCA 02-090, § 1, approved May 30, 2002.]

Cross References

Deposit of tax revenues into Muscogee (Creek) Nation Treasury, see Title 36, § 1-108.

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 3-114. Intergovernmental agreements; authority

The Principal Chief of the Muscogee (Creek) Nation is hereby authorized to enter into intergovernmental agreements of any kind with any Governmental Authority to implement the provisions of this Motor Vehicle Tax and License Code. The term “Governmental Authority” shall include (a) any federal, tribal, state, county or municipal government or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (c) any court, administrative tribunal or public utility.

[Added by NCA 06-075, § 4, eff. May 8, 2006, approved May 8, 2006.]

Library References

Indians ⇄216, 225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59, 140 to 149.

CHAPTER 4. SALES TAX CODE

Section

- 4-101. Citation.
- 4-102. Definitions.
- 4-103. Tax levy rate.
- 4-104. Impact of tax.
- 4-105. Credit for state sales tax collected.
- 4-106. Exemptions.
- 4-107. Sales licensing.
- 4-108. Payment of tax.
- 4-109. Records and audit.
- 4-110. Civil penalties; criminal sanctions.

Historical and Statutory Notes

NCA 01-136, § 5, § 401, provides:

“Section 401. Findings.

“The National Council finds that:

“1. Article VI, section 7(h), of the Constitution of the Muscogee (Creek) Nation empowers the National Council to lay and collect taxes within the boundaries of the Nation’s jurisdiction.

“2. The number of vendors soliciting sales on the Nation’s property has been increasing and will continue to increase in the future.

“3. The sales tax would increase the revenues of the Muscogee (Creek) Nation, complement its regulatory jurisdiction and otherwise benefit the Nation’s citizens; and

“4. To avoid imposing an excessive tax burden on private vendors collecting state sales taxes from their non-Muscogee customers, the National Council finds that a credit equal to a portion of said state tax collected by such vendors is appropriate until the Council decides to legislate otherwise.”

Cross References

Alcoholic Beverages, see Title 21 § 5-115.

§ 4-101. Citation

This chapter of Title 36 shall be known and may be cited as the “Muscogee (Creek) Nation Sales Tax Code.”

[NCA 00-149, § 1-101, approved Sept. 30, 2000; amended by NCA 01-136, § 402, eff. Aug. 1, 2001.]

Library References

Indians ⇄225.

Westlaw Topic No. 209.

C.J.S. Indians §§ 140 to 149.

§ 4-102. Definitions

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

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. “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.

C. "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.

D. "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.

E. "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.

F. "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.

G. "Goods" or "items of value" shall mean any tangible personal property.

H. "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.

I. "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.

J. "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.

K. "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.

L. “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.

M. “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.

N. “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, 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.

O. “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.

P. “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.

[NCA 00–149, § 1–102, approved Sept. 30, 2000; amended by NCA 01–136, § 403, eff. Aug. 1, 2001.]

§ 4–103. Tax levy rate

A. Sales tax levy. There is hereby levied a sales tax of six percent (6%) on the gross receipts or gross proceeds of all items of value or goods bought, sold, rented, leased or exchanged, or any combination thereof, from any vendor within the Muscogee (Creek) Nation’s territorial jurisdiction on or after November 1, 2000. If a sale is consummated by trade, barter, or exchange for anything other than money, the tax shall be computed at the fair market value of the goods or items of value sold.

B. Collection. The Tax Commissioner is hereby directed to commence collecting all such sales taxes levied hereunder on November 1, 2000.

[NCA 00–149, § 3–101, approved Sept. 30, 2000; amended by NCA 01–136, § 404, eff. Aug. 1, 2001.]

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 4–104. Impact of tax

A. Impact on consumer. The impact of the taxes imposed by this Sales Tax Code is declared to be on the consumer and shall be added to the purchase price of goods or items of value sold and recovered from the consumer.

B. Invoices and receipts. Every vendor shall show the amount of such taxes paid as separate items on any invoices or receipts which they may issue.

C. Collection. Any monies which are collected or required to be collected under this Sales Tax Code by a vendor shall be deemed to be held by such vendor in trust for the Muscogee (Creek) Nation.

[NCA 00–149, § 3–102, approved Sept. 30, 2000; amended by NCA 01–136, § 405, eff. Aug. 1, 2001.]

Library References

Indians ⇐225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 4–105. Credit for state sales tax collected

A. Credit. So that vendors subject to this Sales Tax Code may remain competitive with vendors which are not subject to this chapter, a credit against the sales taxes required to be collected under Title 36, §§ 4–103 and 4–104 shall be allowed to any licensed vendor that chooses to collect taxes pursuant to Title 68 Oklahoma Statutes § 1354, in the amount of said state sales taxes so collected, without regard to the amount actually remitted to the Oklahoma Tax Commission. This credit must be directly passed on to the consumer at the point of sale by collecting, as Tribal sales tax, only the difference between the current state sales tax and the current Tribal sales tax.

B. Proof. To be allowed the credit authorized by this section, a vendor must submit to the Commissioner (i) proof of the amount of the state sales tax collected and (ii) proof that the credit allowed herein has been passed on to the consumer. The sufficiency of both such 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 Commissioner shall be provided to the Tax Commission together with or as a part of the sales tax report required by Title 36, § 4–108.

[NCA 00–149, § 3–103, approved Sept. 30, 2000; amended by NCA 01–136, § 406, eff. Aug. 1, 2001.]

Library References

Indians ⇐225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 4–106. 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;

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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;
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.

[NCA 00-149, § 3-104, approved Sept. 30, 2000; amended by NCA 01-100, § 2, eff. June 8, 2001; NCA 01-136, § 407, eff. Aug. 1, 2001.]

Library References

Indians ☞225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 4-107. 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.

[NCA 00-149, § 3-105, approved Sept. 30, 2000; amended by NCA 01-80, § 2, approved May 25, 2001; NCA 01-136, § 408, eff. Aug. 1, 2001.]

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 4-108. 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 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.

[NCA 00-149, § 3-106, approved Sept. 30, 2000; amended by NCA 01-136, § 409, eff. Aug. 1, 2001.]

Library References

Indians ⇨225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 4–109. 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.

[NCA 00–149, § 3–107, approved Sept. 30, 2000; amended by NCA 01–136, § 410, eff. Aug. 1, 2001.]

Library References

Indians ⇨225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 4–110. 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 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 Commis-

sioner 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.

[NCA 00-149, § 4-101, approved Sept. 30, 2000; amended by NCA 01-136, § 411, eff. Aug. 1, 2001.]

Historical and Statutory Notes

Derivation

NCA 00-148, § 103.

Cross References

Administrative enforcement proceeding, see Title 36, § 6-103.

Library References

Indians ☞ 225, 623, 624.

Westlaw Topic No. 209.

C.J.S. Indians §§ 140 to 149, 151 to 179.

CHAPTER 5. CIGARETTES AND TOBACCO PRODUCTS

Section

- 5-101. Citation.
- 5-102. Definitions.
- 5-103. Administration of chapter.
- 5-104. Tax Commission rules and regulations.
- 5-105. Muscogee (Creek) Nation cigarette and tobacco products wholesale enterprise.
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- 5-107. Tax on cigarettes.
- 5-108. Tax on tobacco products.
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- 5-113. Chartered community priority; profits.
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- 5-116. Contents of retail license; posting; privilege; expiration; fees.
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- 5-124. Prohibited acts.
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- 5-126. Possession or disposal of cigarettes and tobacco products in manner other than prescribed law unlawful.
- 5-127. Minors; unlawful purchases, sales or deliveries; misrepresentation; notice.
- 5-128. Minors; supply of cigarettes and tobacco products; misrepresentation.
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- 5-136. Description of offense.
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- 5-138. Proof of violation.
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- 5-140. Transfer, sale, and possession of cigarettes and tobacco products; when unlawful.
- 5-141. Penalty for sale of cigarettes and tobacco products without license.
- 5-142. Officer or agent of corporation deemed a party to offense.
- 5-143. Occupant of premises deemed party to offense.
- 5-144. Premises where cigarettes and tobacco products illegally sold public nuisance.
- 5-145. Penalty for violating chapter; revocation of license.

Historical and Statutory Notes

NCA 01-136, § 6, §§ 501, 502, provide:
"Section 501. Policy.

"A. It is hereby declared to be the policy of the Muscogee (Creek) Nation to raise revenues through the collection of taxes for the manufac-

ture, sale, and distribution of cigarettes and tobacco products within the Muscogee (Creek) Nation territorial jurisdiction by the Muscogee (Creek) Nation Tax Commission.

“B. This Tobacco Code is an exercise of the police power of the Muscogee (Creek) Nation, in and for the protection of the welfare, health, peace, morals, and safety of the people of the Muscogee (Creek) Nation, and its provisions shall be construed for the accomplishment of such purposes.

“C. Except as otherwise required by other applicable law of the Muscogee (Creek) Nation

or by any applicable federal law, the provisions and requirements of this Chapter and any rules, regulations and licenses authorized hereunder shall apply to the sale or barter of cigarettes and tobacco products within the Muscogee (Creek) Nation territorial jurisdiction.

“Section 502. Purpose

“The purpose and intent of this Tobacco Code is to regulate the sale of cigarettes and tobacco products within the Muscogee (Creek) Nation territorial jurisdiction and to raise revenues.”

Cross References

Tulsa smoke shop, see Title 11, § 7–101.

§ 5–101. Citation

This chapter of Title 36 shall be known and cited as the Muscogee (Creek) Nation “Tobacco Code.”

[NCA 01–136, § 503, eff. Aug. 1, 2001.]

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–102. Definitions

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. “Cigarette” means and includes all rolled tobacco or any substitute therefore, wrapped in paper or any substitute therefore and weighing not in excess of three (3) pounds per thousand (1000) cigarettes.

B. “Tribally licensed retail store” means a retail store which sell cigarettes and tobacco products within the Muscogee (Creek) Nation territorial jurisdiction under the Tax Commissioner’s authority and direction.

C. “Muscogee (Creek) Nation wholesale enterprise” means any enterprise owned by the Nation which serves as a wholesale purchaser and distributor of cigarette and tobacco products.

D. “Package” means a container or receptacle used for holding cigarette and tobacco products.

E. “Public place” means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

F. “Sell” or “to sell” shall include all of the following: to solicit and/or receive an order for; to keep or expose for sale; to deliver to value; to peddle; to possess with intent to sell; to traffic in; for any consideration, promised or obtained, directly or indirectly or under any pretext or means whatsoever, to procure or allow to be procured for any other person; “sale” shall include every act of selling as defined herein.

G. “Stamp” means the stamp or stamps produced by the Commission or any other stamp (including the compact stamp) authorized by the Commission that is evidence of the payment of the tax imposed by this chapter.

H. “Tobacco product” means and includes any smokable product of any species of the tobacco plant, including smoking tobacco suitable for smoking in pipes or rolling into cigarettes, any roll of tobacco for smoking irrespective of size or shape or adulteration which has a wrapper made chiefly of tobacco and includes but is not limited to those items commonly known as cigars, cheroots, or stogies, and any articles or products made from tobacco or any substitute therefore except cigarettes, but not including chewing tobacco of any description including snuff.

I. “Vending machine” means and includes any coin operated machine by means of which cigarettes or tobacco products are sold or dispensed.

J. “Warehouse” means a building or structure owned, operated or licensed by the Muscogee (Creek) Nation as a wholesale facility for the receiving, storage, and distribution of cigarettes and tobacco products as permitted by this chapter.

[NCA 01–136, § 504, eff. Aug. 1, 2001; amended by NCA 05–119, § 1, eff. May 31, 2005.]

§ 5–103. Administration of chapter

The Tax Commission shall have the power and duty to administer the Tobacco Code including without limitation the authority to grant and issue licenses under and in pursuance to this title and to do all such things as are deemed necessary or advisable by the Commission for the purpose of carrying into effect the provisions of this chapter or the rules and regulations made by the Commissioner to implement this chapter.

[NCA 93–04, § 1–201, approved Jan. 7, 1993; amended by NCA 01–136, § 505, eff. Aug. 1, 2001.]

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–104. Tax Commission rules and regulations

The Tax Commissioner’s authority to make rules and regulations pursuant to Title 36, § 1–105 shall include rules and regulations not inconsistent with this chapter that are determined by the Commissioner to be necessary for carrying out the provisions of this chapter, including the following:

A. Regulations prescribing an official stamp which shall be attached to every package of cigarettes and tobacco products sold or stamped under this Tobacco Code;

B. Regulations prescribing forms to be used for the purpose of this Tobacco Code or of the rules and regulations made thereunder and the terms and conditions in permits and licenses issued and granted under this Tobacco Code;

C. Regulations prescribing the form of records of purchase of cigarettes and tobacco products and the reports to be made thereon to the Commission and providing for inspection of the records so kept;

D. Regulations prescribing the fees payable in respect of permits and licenses issued under this chapter for which no fees are prescribed in this chapter and prescribing the fees for anything done or permitted to be done under the rules and regulations made thereunder; and

E. Regulations prescribing, subject to the provisions of this chapter, the conditions and qualifications necessary for the obtaining of a cigarettes and tobacco products license and the books and records to be kept and the returns to be made by the licensee and providing for the inspection of such licensed premises.

[NCA 01–136, § 506, eff. Aug. 1, 2001.]

Library References

Indians ⚡225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–105. Muscogee (Creek) Nation cigarette and tobacco products wholesale enterprise

A. Establishment. The Muscogee (Creek) Nation Trade and Commerce Authority may establish a Muscogee (Creek) Nation cigarettes and tobacco products wholesale enterprise for the purpose of purchasing and importing cigarettes and tobacco products for wholesale distribution to licensed retail stores which sell cigarettes and tobacco products within the Muscogee (Creek) Nation territorial jurisdiction. Such enterprise shall not be operated by the Tax Commission, but shall be subject to the regulatory authority of the Tax Commission, including without limitation licensing and taxing authority. No other entity shall be authorized to establish or operate a cigarette and tobacco products wholesale enterprise within the Muscogee (Creek) Nation territorial jurisdiction.

B. Shipment, storage, distribution and records. All cigarettes and tobacco products purchased by a Muscogee (Creek) Nation wholesale enterprise shall be consigned and shipped to such enterprise at a location within the Muscogee (Creek) Nation territorial jurisdiction. The wholesale enterprise shall unload all such products into its warehouse within the Muscogee (Creek) Nation territorial jurisdiction and shall distribute said cigarette and tobacco products from such warehouse to licensed retail stores and shall keep records at such enterprise's principal place of business of all cigarettes and tobacco products, including the name or kind received, on hand, sold, and distributed. Such records may at all times be inspected by any member or representative of the Tax Commission.

C. Invoices. Upon each delivery of cigarettes and tobacco products by a Muscogee (Creek) Nation wholesale enterprise, a duplicate copy of an invoice of the cigarettes and tobacco products purchased shall be delivered to the recipient and (1) one copy shall be retained by said Muscogee (Creek) Nation wholesale enterprise. The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of cigarette and tobacco product purchased, the price paid, the name of the recipient, and the number of the license, with such other information as may be required by the Tax

Commission. The licensed store shall keep and retain the duplicate invoice of all purchases made from a Muscogee (Creek) Nation wholesale enterprise, which shall at all times be subject to inspection by the duly authorized officers, agents, and employees of the Tax Commission.

D. Advance payment. Possession and control of cigarettes or tobacco products owned by the Muscogee (Creek) Nation shall not be surrendered to any person or entity without the Muscogee (Creek) Nation first being paid the full purchase price for same in cash or its equivalent.

E. Revenue. All monies received from the wholesale sale of cigarettes and tobacco products to cigarette and tobacco retail stores shall be deposited in a revolving fund in the Tribal treasury to the credit of the Commission. The Commission is hereby authorized to purchase cigarettes and tobacco products from moneys deposited to its account in the revolving fund. The Commission shall pay from its account in the revolving fund its administrative expenses, subject to the limits imposed by legislative appropriation.

F. Obligations. No obligation created or incurred by the Commission for the operation of a Muscogee (Creek) Nation cigarette and tobacco wholesale or retail enterprise may ever be or become a general debt or claim against the Muscogee (Creek) Nation but shall be payable by the Muscogee (Creek) Nation Wholesale Enterprise solely from funds derived from its operations, and nothing herein shall be construed to be a waiver of the sovereign immunity of the Muscogee (Creek) Nation.

[NCA 01–136, § 507, eff. Aug. 1, 2001.]

Library References

Indians ⇨225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–106. Muscogee (Creek) Nation cigarette and tobacco products retail enterprise

The Muscogee (Creek) Nation, an agency of the Muscogee (Creek) Nation, or any authorized Muscogee (Creek) Nation entity established by law of the Nation may establish and operate cigarette and tobacco products retail businesses within the Muscogee (Creek) Nation Territorial jurisdiction. Such enterprises shall not be operated by the Tax Commission, but shall be subject to the regulatory authority of the Tax Commission, including without limitation licensing and taxing authority.

[NCA 01–136, § 508, eff. Aug. 1, 2001.]

Library References

Indians ⇨225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–107. Tax on cigarettes

A. There is hereby levied upon the sale, use, gift, possession and/or consumption of cigarettes within the Muscogee (Creek) Nation territorial jurisdic-

tion a tax of fifty-five cents (\$0.55) for each package of cigarettes containing twenty (20) cigarettes or less.

B. Of the fifty-five cents (\$0.55) tax per package of cigarettes imposed and levied hereunder, one cent (\$.001) shall be earmarked for expenditure on the preparation and distribution of health education materials benefitting the Nation's citizens.

C. Each year, during and as a part of the Comprehensive Annual Budget process, the Director of the Health Administration, after consultation with the Controller regarding the availability of revenues earmarked for health education, shall prepare and present a budget for the use and expenditure of said revenues for preparation of health education materials for presentation and distribution to Muscogee (Creek) Nation citizens, as well as a written plan identifying the health issues to be addressed, describing the health education materials to be distributed and the manner of distribution of such materials. The appropriation of funds earmarked for health education materials shall be included in the Health Administration portion of the Comprehensive Annual Budget, shall not exceed earmarked taxes collected during the previous fiscal year, and shall be used exclusively for supplies, materials, artwork, design, printing, postage, equipment, and travel within the Nation's boundaries or to other areas outside the boundaries where substantial numbers of the Nation's citizens reside.

[NCA 93–04, § 1–301, approved Jan. 7, 1993; amended by NCA 95–101, § 5, passed Dec. 16, 1995 (unsigned); NCA 96–73, § 103, approved Oct. 28 1996; NCA 99–39, §§ 103, 104, approved April 30, 1999; NCA 01–136, § 509, eff. Aug. 1, 2001; NCA 05–287, § 2, eff. Jan. 5, 2006.]

Cross References

Deposit of tax revenues into Muscogee (Creek) Nation Treasury, see Title 36, § 1–108.

Library References

Indians ⇌225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–108. Tax on tobacco products

There is hereby levied upon the sale, use, gift, possession, or consumption of tobacco products within the Muscogee (Creek) Nation territorial jurisdiction a tax of five percent (5%) of the factory list price exclusive of any trade discount, special discounts, or deals which shall be paid prior to the time of retail sale and delivery thereof. This tax does not apply to sales by the Muscogee (Creek) Nation to persons for resale to ultimate consumers outside the Muscogee (Creek) Nation territorial jurisdiction.

[NCA 93–04, § 1–302, approved Jan. 7, 1993; amended by NCA 01–136, § 510, eff. Aug. 1, 2001.]

Library References

Indians ⇌225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–109. Tax in lieu of other taxes

The taxes levied by Title 36, § 5–107 and Title 36, § 5–108 on cigarettes and tobacco products respectively shall be in lieu of all other forms of tax including sales and other general taxes imposed by law. It is not in lieu of the cost to the Muscogee (Creek) Nation of purchasing the cigarettes and tobacco products including the face value of the Compact Stamp.

[NCA 93–04, § 1–303, approved Jan. 7, 1993; amended by NCA 01–136, § 511, eff. Aug. 1, 2001.]

Library References

Indians ☞225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–110. Tax on ultimate consumer

All taxes paid pursuant to Title 36, § 5–107 and Title 36, § 5–108 shall be conclusively presumed to be direct taxes on the retail consumer pre-collected for the purpose of convenience and facility only. The full face value of the tax shall be added to the cost of the cigarettes and tobacco products and recovered from the ultimate consumer.

[NCA 93–04, § 1–304, approved Jan. 7, 1993; amended by NCA 01–136, § 512, eff. Aug. 1, 2001.]

Library References

Indians ☞225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–111. Tax stamp

A. Stamps as evidence of tax payment. Payment of taxes imposed by this chapter of Title 36 shall be evidenced by such stamps as required by the Tax Commission to be affixed to each package of cigarettes and tobacco products. Every wholesaler who has paid such taxes shall show the amount of such taxes as a separate item on any invoices which they may issue.

B. Stamp requirement. Each person who owns or operates a retail store which sells cigarettes and tobacco products in Muscogee (Creek) Nation territorial jurisdiction shall buy, sell, or have in their possession only those cigarettes and tobacco products to which the wholesaler has first caused to have affixed such stamp or stamps as required by the Tax Commission.

C. Wholesaler license. Every wholesaler of cigarettes or tobacco products must apply and receive from the Commission a “Tobacco Wholesaler License” prior to distributing cigarettes and tobacco products to retail stores which sell cigarette and tobacco products in Muscogee (Creek) Nation territorial jurisdiction. Forms for such applications and license shall be provided by the Commission to wholesalers of cigarettes or tobacco products operating in the Muscogee (Creek) Nation territorial jurisdiction.

D. Wholesaler reports. Every wholesaler or retailer of cigarettes or tobacco products shall submit monthly reports to the Commission. The Commission

shall promulgate regulations and develop forms regarding disclosure of the opening and closing inventories of unstamped tobacco; stamped tobacco; tobacco stamps, tax paid, purchases of tobacco including the invoice number, name and address of seller, date and amount of each type of tobacco purchased and such other information pertinent to their business done in the Muscogee (Creek) Nation territorial jurisdiction as the Commission shall require; and sales of tobacco; buyer, date and amount of each type of tobacco sold and such other information pertinent to their business done in the Muscogee (Creek) Nation territorial jurisdiction as the Commission shall require.

E. Records. All wholesalers and retailers of tobacco within the Muscogee (Creek) Nation territorial jurisdiction, shall maintain for not less than three (3) years complete and adequate records, including invoices, of all tobacco received and sold or otherwise disposed of, and tax stamps purchased paid. The Commission may inspect said records at any time to determine whether sufficient stamps have been purchased to account for all tobacco received and sold or otherwise disposed of by said wholesaler or retailer, and whether the proper tax has been paid.

[NCA 93-04, § 1-305, approved Jan. 7, 1993; amended by NCA 01-136, § 513, eff. Aug. 1, 2001.]

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5-112. Retail license; eligibility; licensee duties

A. Retail license. Every retailer of cigarettes or tobacco products must apply for and receive from the Commission a Tobacco Retailer License prior to establishing any retail store for the sale of cigarettes or tobacco within the Muscogee (Creek) Nation territorial jurisdiction. A separate license is required for each separate retail store site. Forms for such application and license shall be provided by the Commission.

B. Eligibility requirements. An applicant for a retail license is eligible to obtain a retail license, and a recipient of a retail license is authorized to maintain a retail license, only if the Commissioner determines that the following eligibility requirements have been met, and continue to be met:

1. The place of business or the retail store is located within Muscogee (Creek) Nation territorial jurisdiction;
2. The site of the business or retail store is owned by the license applicant or is validly leased to the license applicant;
3. If the applicant for the licensee has a lease, sub-lease or an assignment of the site of the business or retail store, the applicant shall provide a copy of the lease, sub-lease or assignment to the Tax Commission; and
4. The business or retail store is wholly owned and operated by the Muscogee (Creek) Nation, a chartered Indian community and/or an Indian citizen or citizens of the Muscogee (Creek) Nation; provided that if any corporation or partnership owns stock or other interest in, manages or operates the business

or retail store, on property owned by the Muscogee (Creek) Nation, at least fifty-one percent (51%) of the stock or partnership interest shall be held by the Muscogee (Creek) Nation or a chartered Indian community that has use of the property and/or an Indian citizen or citizens, as demonstrated by a governing document, a copy of which shall be provided to the Tax Commission; and provided further, that if a business or retail store on property owned by the Muscogee (Creek) Nation is managed or operated by any person, corporation or partnership other than the Muscogee (Creek) Nation or a chartered Indian community or an Indian citizen owner, said manager or operator shall be required to obtain a license for the site, and said site shall be eligible for a license only if said manager or operator has a written lease agreement, partnership agreement, management agreement or other type of agreement with the Muscogee (Creek) Nation or a chartered Indian community that has use of the property which requires distribution of at least fifty-one percent (51%) of the net revenues from said business or retail store to said Muscogee (Creek) Nation or a chartered Indian community that has use of the property provided further that a financial report and proof of such distribution shall be provided to the Commissioner semi-annually on or before June 30 and December 31 of the calendar year for which the license was issued, and at such other times as requested by the Tax Commissioner. All currently existing written lease agreements, partnership agreements, management agreements or other types of memorandum with the Muscogee (Creek) Nation or a chartered Indian community shall be honored until the date of expiration.

5. If a non-Indian holds any stockholder or partnership interest in a corporation or partnership which owns the business or retail store, a copy of the corporation's articles of incorporation or a copy of the partnership documents shall be provided to the Tax Commission, along with any other written documentation demonstrating that distribution of at least fifty-one percent (51%) of the net revenues from said business or retail store to said Indian citizen or citizens is required.

C. Duties of licensees. Retailers who receive licenses from the Tax Commission are subject to the following requirements:

1. Cigarette packages sold at the outlet must have affixed a stamp depicting taxes collected for the benefit of the Muscogee (Creek) Nation.

2. The licensee must display in a prominent place a current and valid license or permit for that location.

3. The licensee shall not allow the license or stamps to be transferred to any other person or organization or for any other location without written approval of the Commissioner.

4. The licensee is prohibited from allowing any person under the age of eighteen (18) years of age to be employed in the sale of tobacco products or to purchase tobacco products.

5. The licensee shall maintain such operations and financial records and documents as required by this chapter and by regulations and rules of the Tax Commission, for the purpose of insuring proper collection of the Nation's taxes,

and shall follow all other applicable rules and regulations of the Tax Commission.

[NCA 01-136, § 514, eff. Aug. 1, 2001; NCA 01-215, § 1, approved Dec. 4, 2001.]

Cross References

Denial of application for retail or wholesale tobacco license, see Title 36, § 6-101.

Library References

Indians ↻225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5-113. Chartered community priority; profits

A. First priority. Chartered communities shall be afforded first priority for licensing a retail tobacco store within their community boundaries.

B. Notice; failure of community to exercise preference. The Tax Commissioner shall notify a chartered community when an application has been received for a retail tobacco license within that community's jurisdiction. The community shall have thirty (30) days to exercise its preference for a retail license after notice from the Tax Commissioner. If a chartered community fails to exercise its preference in licensing a retail store within the community's area by submitting formal application to the Muscogee (Creek) Nation Tax Commission, other operators may then be allowed to apply for licensing within the community jurisdiction.

C. Community consent under certain circumstances. If a chartered community currently operates/sanctions a retail store within their community, and another entity desires to also license a location within a five (5) mile radius of the existing community cigarette and tobacco store, said entity must have the formal consent of the community.

D. Community needs to be considered. Before acting on an application for a license for a location for a retail cigarette and tobacco store owned or operated by the Muscogee (Creek) Nation (whether within or without a Travel Plaza Enterprise) within a five (5) mile radius of an existing community owned cigarette and tobacco store, the Tax Commissioner shall take into consideration the social and economic needs of the chartered community and avoid economic harm to the community, if at all possible.

E. Communities to receive portion of Nation's profits. If a cigarette and tobacco retail store owned or operated by the Muscogee (Creek) Nation (whether within or without a Travel Plaza Enterprise) is located within a five (5) mile radius of an existing community cigarette and tobacco store, the Tax Commissioner shall assure that chartered communities receives three percent (3%) of the net sales of cigarette tobacco products sold at such Tribally owned cigarette and tobacco store as compensation whether said store is within or without a Travel Plaza Enterprise. Chartered communities entitled to such compensation shall be given copies of all invoices and other purchase and sales records together with their quarterly payment and chartered communities shall have the right to audit the books of said Tribally owned cigarette and tobacco store. In the event that a chartered community ceases the retail sale of cigarettes and

tobacco products within a five (5) mile radius of a cigarette and tobacco retail store owned or operated by the Muscogee (Creek) Nation, the community shall not be entitled to payment of any percentage of the net sales by said Muscogee (Creek) Nation retail store.

F. Gaming facility sales. A retail store operated by a chartered Indian community is hereby authorized to sell cigarettes and tobacco products directly to a Gaming facility that is located within the chartered Indian community's boundaries; provided that the Gaming facility wishes to sell cigarettes and tobacco products to its patrons; and provided further that the chartered Indian community and the Gaming facility enter into a contract formalizing this agreement. Once the contract is fully executed, it shall be the responsibility of the chartered Indian community to inform the Commission of this activity. Once the chartered Indian community has purchased the cigarettes and tobacco products in accordance with the laws of the Muscogee (Creek) Nation from a licensed wholesale enterprise, these cigarettes and tobacco products shall not be subject to any further taxation by the Commission. For the purposes of this chapter, the chartered Indian community shall not be considered a wholesale enterprise.

[NCA 01-136, § 515, eff. Aug. 1, 2001; amended by NCA 09-154, § 1, eff. Oct. 8, 2009.]

Historical and Statutory Notes

Derivation:

NCA 97-94.
NCA 98-02.

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5-114. Application; investigation

A. Applications. Prior to the issuance of any license under this chapter, the applicant shall file with the Commission an application in writing, signed by the applicant's management and containing such information and statements relative to the applicant and the premises where the cigarette and tobacco products is to be sold as may be required by the Commission. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. All applicants for a Muscogee (Creek) Nation retail cigarette and tobacco products license, including corporate officers and managers, may be required by the Commission when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license.

B. Investigation. Upon receipt of a completed application for a license under this chapter, accompanied by the necessary license fee, the Commission shall within thirty (30) days make a thorough investigation of all matters pertaining thereto and shall determine whether such applicant is qualified to receive a license and the premises are suitable for the carrying on of the

business and whether the requirements of this chapter and rules and regulations promulgated by the Commission are met and complied with.

[NCA 93-04, § 4-202, approved Jan. 7, 1993; amended by NCA 01-136, § 516, eff. Aug. 1, 2001.]

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5-115. License as privilege; criteria for decision on application

A. Privilege. A license under this chapter is a privilege which the Muscogee (Creek) Nation may grant to an applicant and is not a right to which any applicant is entitled.

B. Eligibility; findings. The Commission must find in every case where it makes an order for the issuance of a new retail license that:

1. The application is for a retail store;
2. The applicant and its management has a good record and can demonstrate that the management of the applicant is likely to operate the establishment in compliance with all applicable laws of the Muscogee (Creek) Nation;
3. The applicant's management is not under the age of twenty-one (21) years;
4. The applicant or anyone in the applicant's management has not been convicted of a felony ; and
5. The location to be licensed is at a site which will make it accessible to law enforcement authorities and oversight by the Tax Commissioner.

C. Annual fee. Each retail store licensed to sell cigarettes and tobacco products, under the provisions of this chapter, shall pay an annual license fee of one hundred dollars (\$100.00).

[NCA 93-04, § 4-201, approved Jan. 7, 1993; amended by NCA 01-136, § 517, eff. Aug. 1, 2001.]

Cross References

Juvenile adjudication not to impose civil disability, see Title 6, § 1-404.

Library References

Indians ⇄225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5-116. Contents of retail license; posting; privilege; expiration; fees

A. Contents of license; posting. Every license issued under this part shall set forth the name of the person or entity to whom issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the Commission shall deem necessary. Every license must be posted in a conspicuous place on the premises wherein

the business authorized under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the Commission or to any peace officer of the Muscogee (Creek) Nation.

B. Personal license. Any license issued under the provisions of the part shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

C. Discretion. The number of such licenses that the Commission may issue shall be determined by the Commission in the exercise of its sound discretion, and the Commission, may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause.

[NCA 93-04, § 4-102, approved Jan. 7, 1993; amended by NCA 01-136, § 518, eff. Aug. 1, 2001.]

Library References

Indians ☞225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5-117. Denial of license

A. Denial. The Commission may deny the issuance of a cigarettes and tobacco products license if it determines that licensing eligibility requirements have not been met.

B. Public welfare. No license under this chapter may be issued if the Commission finds that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected or that the purposes of this chapter will not be carried out by the issuance of such license.

C. Appeal. If the Tax Commission denies an application for a license, the applicant may appeal the denial pursuant to Title 36, § 6-101.

[NCA 93-04, § 4-205, approved Jan. 7, 1993; amended by NCA 01-136, § 519, eff. Aug. 1, 2001.]

Library References

Indians ☞225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5-118. Renewal; suspension or revocation; penalty

The Commission may upon its own motion and shall upon a written verified complaint of any person investigate the action and operation of any retailer licensed under this chapter. If the Commission, after investigation, shall have reasonable cause to believe that any such licensed store has violated any of the provisions of this chapter or any rules and regulations of the Commission, it may, in its discretion and in addition to the other penalties prescribed, reprimand a licensed store, proceed to revoke the license of any such licensed store or it may suspend the same for a period of not to exceed three (3) months or it

may refuse to grant a renewal of said license upon the expiration thereof or impose a civil penalty not to exceed one thousand five hundred dollars (\$1,500), subject to the opportunity for a hearing under Title 36, § 6–101.

[NCA 93–04, § 4–206, approved Jan. 7, 1993; amended by NCA 01–136, § 520, eff. Aug. 1, 2001.]

Library References

Indians ☞225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–119. Expiration of licenses

Each January 1, the Commission shall issue licenses for the retail sale of cigarettes and tobacco products on an annual basis and at such fees as are prescribed by law, and such licenses shall expire at midnight on December 31 of the license year. The Commission shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency.

[NCA 93–04, § 4–207, approved Jan. 7, 1993; amended by NCA 01–136, § 521, eff. Aug. 1, 2001.]

Library References

Indians ☞225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–120. Renewal of suspended licenses

After suspension or revocation of a license, the Commission shall have the power to renew the same if in its discretion a proper showing has been made.

[NCA 93–04, § 4–208, approved Jan. 7, 1993; amended by NCA 01–136, § 522, eff. Aug. 1, 2001.]

Library References

Indians ☞225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–121. Vending machine permits

A. Application for permit. Every wholesaler or retailer of cigarettes or tobacco products must apply for and receive from the Commission a “Tobacco Vending Machine Permit” prior to operating any vending machines within the Muscogee (Creek) Nation territorial jurisdiction. Forms for such application and permits shall be provided by the Commission.

B. Permit non-assignable and non-transferable. The Vending Machine Permit shall be non-transferable and non-assignable. A separate permit shall be required for each separate vending machine. The permit shall be attached to the vending machine in such a manner as to be clearly visible to the public and to persons purchasing cigarettes or tobacco products therefrom. A fee is to be assessed by Commission on each new or renewal permit issued.

C. Seizure of contraband. Any operating vending machine from which cigarettes or tobacco products may be purchased not having a Tobacco Vending Machine Permit attached thereto is contraband within the Muscogee (Creek) Nation territorial jurisdiction and is subject to seizure and sale as is prescribed by law.

[NCA 01–136, § 523, eff. Aug. 1, 2001.]

Library References

Indians ☞225, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–122. Search warrants

Upon information on oath by any investigator appointed under this title or by any law enforcement officer showing reasonable cause to believe that cigarettes and tobacco products are unlawfully kept for unlawful purposes in any building or premises, it shall be lawful for any court by warrant to authorize and empower the investigator or law enforcement officer or any other person named therein to enter and search the building or premises and every part thereof and for that purpose to break open any door, lock, or fastening of the building or premises or any part thereof or any closet, cupboard, box or other receptacle therein which might contain cigarettes and tobacco products.

[NCA 93–04, § 5–102, approved Jan. 7, 1993; amended by NCA 01–136, § 524, eff. Aug. 1, 2001.]

Library References

Searches and Seizures ☞79.
Westlaw Topic No. 349.

C.J.S. Searches and Seizures §§ 128 to 130,
132 to 134.

§ 5–123. Examination of retailer’s premises

The Commission or any duly authorized representative thereof or a law enforcement officer shall have the right at any time to make an examination of the premises of a retail licensed store as to whether the laws of the Muscogee (Creek) Nation and the rules and regulations of the Commission are being complied with by the licensee.

[NCA 93–04, § 5–103, approved Jan. 7, 1993; amended by NCA 01–136, § 525, eff. Aug. 1, 2001.]

Library References

Searches and Seizures ☞79.
Westlaw Topic No. 349.

C.J.S. Searches and Seizures §§ 128 to 130,
132 to 134.

§ 5–124. Prohibited acts

A. Other business. No officer or employee of the Tax Commission and no officer or employee of any Muscogee (Creek) Nation wholesale or retail enterprise, including those engaged in the sale of cigarettes and tobacco products at cigarette and tobacco stores within the Muscogee (Creek) Nation territorial jurisdiction, may be directly or indirectly interested or engaged in any other business or undertaking dealing in cigarettes and tobacco products, whether as

owner, part owner, partner, member of syndicated shareholder, agent, or employee and whether for his own benefit or in a fiduciary capacity for some other person.

B. Receipt of gifts. No officer or employee of the Tax Commission and no officer or employee of any Muscogee (Creek) Nation wholesale or retail enterprise may solicit or receive directly or indirectly any commission, remuneration, or gift whatsoever from any person or corporation having sold, selling, or offering cigarettes and tobacco products for sale to a Muscogee (Creek) Nation wholesale or retail enterprise pursuant to this chapter.

C. Offer of remuneration. No person selling or offering for sale to or purchasing cigarettes and tobacco products from a Muscogee (Creek) Nation wholesale or retail enterprise may either directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any member or employee of the enterprise, to any employee of the Muscogee (Creek) Nation, or to anyone on behalf of such member or employee.

[NCA 93-04, § 1-204, approved Jan. 7, 1993; amended by NCA 01-136, § 526, eff. Aug. 1, 2001.]

§ 5-125. Unlawful sales solicitation or advertising; exceptions

A. Unlawful sales solicitation or advertising. No person within the Muscogee (Creek) Nation territorial jurisdiction shall:

1. canvass for, receive, take, or solicit orders for the purchase or sale of any cigarettes and tobacco products or act as agent or intermediary for the sale or purchase of any cigarettes and tobacco products or hold himself out as such agent or intermediary unless permitted to do so under rules and regulations that shall be promulgated by the Muscogee (Creek) Nation to govern such activities;

2. exhibit, publish, display or permit to be exhibited, published or displayed any form of advertisement or any other announcement, publication, or price list of or concerning cigarettes and tobacco products or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules and regulations of the Muscogee (Creek) Nation and then only in accordance with such rules and regulations.

B. Inapplicability. This section shall not apply to:

1. the Muscogee (Creek) Nation, or any act of the Muscogee (Creek) Nation; or

2. the receipt or transmission of a telegram or letter by any telegraph agent or operator or postoffice employee in the ordinary course of his employment as such agent, operator, or employee.

[NCA 93-04, § 3-101, approved Jan. 7, 1993; amended by NCA 01-136, § 527, eff. Aug. 1, 2001.]

§ 5-126. Possession or disposal of cigarettes and tobacco products in manner other than prescribed law unlawful

It shall be unlawful to sell or dispose of, or possess for the purpose of sale of cigarettes and tobacco products of any kind or character other than in the manner permitted by this chapter.

[NCA 93-04, § 3-102, approved Jan. 7, 1993; amended by NCA 01-136, § 528, eff. Aug. 1, 2001.]

§ 5-127. Minors; unlawful purchases, sales or deliveries; misrepresentation; notice

A. Sales to minors prohibited. It shall be an offense for any person who sells cigarettes or tobacco products within the Muscogee (Creek) Nation territorial jurisdiction to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any cigarette and/or tobacco product to any person under eighteen (18) years of age. Any person convicted of this offense shall be guilty of a misdemeanor punishable for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines.

B. Misrepresentation of age by minors. Any person under eighteen (18) years of age or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining any cigarette and tobacco products from such store shall be equally guilty with said store and shall, upon conviction thereof, be guilty of a misdemeanor punishable for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines; provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of a cigarette and tobacco product to any person in violation of any federal law.

C. Notice. It shall be further mandatory under the provisions of this chapter that all cigarette and tobacco retail stores display in a prominent place in their premises a placard as issued by the Commission stating fully the consequences for violations of the provisions of this chapter by persons under eighteen (18) years of age.

[NCA 93-04, § 3-103, approved Jan. 7, 1993; amended by NCA 01-136, § 529, eff. Aug. 1, 2001.]

Library References

Indians ⇄ 133, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 150.

§ 5-128. Minors; supply of cigarettes and tobacco products; misrepresentation

A. No person shall sell, give, or otherwise supply cigarette and tobacco products to any person under eighteen (18) years of age or permit any person under that age to consume any cigarette and tobacco products.

B. Any person shall be guilty of a misdemeanor punishable for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines who:

1. invites a person under the age of eighteen (18) years into a public place where cigarette and tobacco products are sold and treats, gives, or purchases any cigarette and tobacco products for such person;

2. permits such person in a public place where any cigarette and tobacco products are sold to treat, give, or purchase cigarettes and tobacco products for him; or

3. holds out such person to be eighteen (18) years of age or older to the store manager of the establishment of his or her employee or employees.

[NCA 93–04, § 5–304, approved Jan. 7, 1993; amended by NCA 01–136, § 530, eff. Aug. 1, 2001.]

Library References

Indians ⇄133, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 150.

§ 5–129. Exclusions from taxation

Notwithstanding any other the provision in this title or any other provision of law, any natural person who shall come into possession or ownership of cigarettes or tobacco products outside the jurisdiction of the Muscogee (Creek) Nation for personal use and consumption only, and upon which is affixed evidence showing that any taxes validly imposed by another jurisdiction having the legal authority to so tax from which said cigarettes or tobacco products were acquired to have been paid, shall have exempted from payment of taxes pursuant to this chapter the following amounts of each of the following in possession and/or ownership at any one time:

1. Cigarettes—one thousand (1000) individual cigarettes.
2. Cigars—two hundred (200) individual cigars.
3. Other tobacco products—no more than two (2) pounds total.

[NCA 01–136, § 531, eff. Aug. 1, 2001.]

Historical and Statutory Notes

Derivation:

NCA 92–71, Title IV Tobacco Tax, § 406.

Library References

Indians ⇄225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5–130. Exemption for religious and ceremonial use

Notwithstanding the provisions of Title 36, § 5–129 herein or any other provision of law, possession, gift, or use of noncommercial, privately produced tobacco for religious or ceremonial use shall be exempt from taxation; provided, however, that if such tobacco is sold, such sale shall be prima facie evidence that the tobacco is not intended for religious or ceremonial use.

[NCA 01–136, § 532, eff. Aug. 1, 2001.]

Historical and Statutory Notes

Derivation:

NCA 92–71, Title IV Tobacco Tax, § 407.

Library References

Indians ↻225.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 5-131. Unlawful cigarette and tobacco products; seizure; forfeiture

Any investigator or law enforcement officer who finds any cigarette and tobacco products which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this chapter may forthwith seize and remove the same and the packages in which the cigarette and tobacco products are kept, and upon conviction of the person for a violation of any provisions of this chapter, the cigarette and tobacco products and all packages containing the same shall, in addition to any other penalty prescribed by this chapter, ipso facto be forfeited to the Muscogee (Creek) Nation.

[NCA 93-04, § 5-104, approved Jan. 7, 1993; amended by NCA 01-136, § 533, eff. Aug. 1, 2001.]

§ 5-132. Seizure and forfeiture of cigarette and tobacco products and conveyance

Whenever an investigator or any law enforcement officer is making or attempting to make a search under and in pursuance of authority in law shall find in any motor vehicle, vessel, boat or conveyance of any description any cigarette and tobacco products which are unlawfully kept or had for unlawful purposes contrary to any of the provisions in this chapter in any such vehicle, vessel, boat, or conveyance, the Court in which the conviction of any such person is had may, in addition to the sentence imposed under authority of law declare the cigarette and tobacco products or any part thereof so seized and the package in which the same is contained to be forfeited to the Muscogee (Creek) Nation and/or any other governmental entity which has a right to bring a forfeiture action in the Muscogee (Creek) Nation courts. The Court may in and by decree further declare the motor vehicle, vessel, boat, or conveyance seized to be forfeited sold, and proceeds disbursed to the appropriate governmental entity.

[NCA 93-04, § 5-105, approved Jan. 7, 1993; amended by NCA 01-136, § 534, eff. Aug. 1, 2001.]

§ 5-133. Disposal of forfeited cigarettes and tobacco products; report

In every case where cigarettes and tobacco products are seized by a law enforcement officer, it shall be his duty to forthwith make or cause to be made to the Commission a report in writing of the particulars of such seizure.

[NCA 93-04, § 5-107, approved Jan. 7, 1993; amended by NCA 01-136, § 535, eff. Aug. 1, 2001.]

§ 5-134. Inspection of carrier's records

For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the Commission or any person appointed by it in writing for the purpose may inspect the freight and express books and records and all waybills, bills of lading, receipts, and

documents in the possession of any common carrier doing business within the Muscogee (Creek) Nation territorial jurisdiction containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the Muscogee (Creek) Nation territorial jurisdiction.

[NCA 93–04, § 5–108, approved Jan. 7, 1993; amended by NCA 01–136, § 536, eff. Aug. 1, 2001.]

Library References

Searches and Seizures ¶79.
Westlaw Topic No. 349.

C.J.S. Searches and Seizures §§ 128 to 130,
132 to 134.

§ 5–135. Unlawful for carrier to refuse inspection of records

Every common carrier and every office or employee of any such common carrier who neglects or refuses to produce and submit for inspection any book, record, or document referred to in Title 36, § 5–134 when requested to do so by the Commission or by a person so appointed by it shall be guilty of an offense against this chapter and subject to civil penalties.

[NCA 93–04, § 5–109, approved Jan. 7, 1993; amended by NCA 01–136, § 537, eff. Aug. 1, 2001.]

§ 5–136. Description of offense

In describing the offense respecting the sale or keeping for sale of other disposal of cigarettes and tobacco products or the having, keeping, giving, purchasing, or consumption of cigarettes and tobacco products in any information, summons, conviction, warrant, or proceeding under this Tobacco Code, it shall be sufficient to state simply the sale or keeping the sale or disposal, having, keeping, giving, purchasing, or consumption of cigarettes and tobacco products, without stating the name or kind of cigarettes and tobacco products or the price thereof, the name of any person to whom it was sold or disposed of or by whom it was taken or consumed or from whom it was purchased or received, or the quantity of cigarettes and tobacco products, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity.

[NCA 93–04, § 5–203, approved Jan. 7, 1993; amended by NCA 01–136, § 538, eff. Aug. 1, 2001.]

§ 5–137. Sufficiency of evidence

In any prosecution under this chapter for the sale or keeping for sale or other disposal of cigarettes and tobacco products or the having, keeping, giving, purchasing, or consuming of cigarettes and tobacco products, it shall not be necessary that any witness should depose to the precise description or quantity of the cigarettes and tobacco products sold, disposed of, kept, had, given, purchased, or consumed or the precise consideration (if any) received or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but conviction may be based upon

circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt.

[NCA 93-04, § 5-205, approved Jan. 7, 1993; amended by NCA 01-136, § 539, eff. Aug. 1, 2001.]

Library References

Indians ☞613.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 5-138. Proof of violation

In providing the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of cigarettes and tobacco products, it shall not be necessary in any prosecution to show that any money actually passed or any cigarettes and tobacco products were actually consumed, if the court hearing the cases is satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place or that any consumption of cigarettes and tobacco products was about to take place. Proof of consumption or intended consumption of a cigarettes and tobacco products on premises on which such consumption is prohibited by some person not authorized to consume cigarettes and tobacco products thereon shall be evidence that such cigarettes and tobacco products were sold, given to, or purchased by the person consuming or being about to consume or carrying away the same, as against the occupant of the premises.

[NCA 93-04, § 5-206, approved Jan. 7, 1993; amended by NCA 01-136, § 540, eff. Aug. 1, 2001.]

§ 5-139. Inferences of fact from evidence found

Upon the hearing of any charge of selling or purchasing cigarettes and tobacco products or of unlawfully having or keeping cigarettes and tobacco products contrary to any of the provisions of this chapter, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of cigarettes and tobacco products found in the possession or the person accused or in any building, premise, vehicle, motorcar, automobile, vessel, boat, conveyance, or place occupied or controlled by him and from the frequency with which the cigarettes and tobacco products are received thereat or therein or is removed therefrom and from the circumstances under which it is kept or dealt with.

[NCA 93-04, § 5-207, approved Jan. 7, 1993; amended by NCA 01-136, § 541, eff. Aug. 1, 2001.]

Library References

Indians ☞611.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 5-140. Transfer, sale, and possession of cigarettes and tobacco products; when unlawful

A. Prohibited sales. Except as provided by this chapter, no person shall, within the Muscogee (Creek) Nation territorial jurisdiction, by himself, his

clerk, servant, or agent, expose or keep for sale or, directly or indirectly or upon any pretense or upon any device, sell or offer to sell, or in consideration of the purchase or transfer of any property or for any other consideration at the time of the transfer of any property, give to any other person any cigarettes and tobacco products.

B. Possession limitations. Nothing in this chapter shall prohibit any person entering the Muscogee (Creek) Nation territorial jurisdiction from any other location from having in his possession not to exceed one thousand (1,000) cigarettes or five hundred (500) cigars, or two (2) pounds of tobacco products. No person claiming to have so entered the Muscogee (Creek) Nation territorial jurisdiction shall at any time have in his possession more than these specified amounts of cigarettes and tobacco products.

C. Possession of seized cigarettes and tobacco products. Nothing contained in this section shall apply to the possession by a law enforcement officer or bailiff or cigarettes and tobacco products seized under execution or other judicial or extrajudicial process or to sales under executions or other judicial or extrajudicial process to the Commission.

D. Prohibited purchases. Except as provided in this chapter, no person shall, within the Muscogee (Creek) Nation territorial jurisdiction, by himself, his clerk, servant, or agent:

1. attempt to purchase any cigarettes and tobacco products;
2. directly or indirectly or upon any pretense or device, purchase any cigarettes and tobacco products; or
3. in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any cigarettes and tobacco products.

E. Penalty. It shall be unlawful for any Indian person to willfully, intentionally and knowingly violate any provision of this section. Every Indian person convicted of violating this section 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 (\$1,000.00) or by both such fine and imprisonment.

[NCA 93-04, § 5-301, approved Jan. 7, 1993; amended by NCA 01-136, § 542, eff. Aug. 1, 2001.]

§ 5-141. Penalty for sale of cigarettes and tobacco products without license

Any person who has not been issued a license under this chapter who sells or keeps for sale any cigarettes and tobacco products is punishable by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) or by imprisonment of not more than one (1) year or by both such fine and imprisonment.

[NCA 93-04, § 5-302, approved Jan. 7, 1993; amended by NCA 01-136, § 543, eff. Aug. 1, 2001.]

Library References

Indians ☞623.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 5-142. Officer or agent of corporation deemed a party to offense

Where an offense against this chapter is committed by a corporation, the officer or agent of the corporation, the officer or agent of the corporation in charge of the premises in which the offense is committed shall prima facie be deemed to be a party to the offense so committed and shall be personally liable to the penalties prescribed for the offense as a principal offender. Nothing in this section shall relieve the corporation or the person who actually committed the offense from liability.

[NCA 93-04, § 5-310, approved Jan. 7, 1993; amended by NCA 01-136, § 544, eff. Aug. 1, 2001.]

§ 5-143. Occupant of premises deemed party to offense

Upon proof of the fact that an offense against this chapter has been committed by any person in the employ of the occupant of any house, shop, room, or other premises in which the offense is committed or by any person who is suffered by the occupant to be or remain in or upon such house, shop, room, or premises or to act in any way for the occupant, the occupant shall prima facie be deemed to be a party to the offense so committed and shall be liable to the penalties prescribed for the offense as a principal offender, notwithstanding the fact that the offense was committed by a person who is not proved to have committed it under or by the direction of the occupant. Nothing in this section shall relieve the person actually committing the offense from liability there.

[NCA 93-04, § 5-311, approved Jan. 7, 1993; amended by NCA 01-136, § 545, eff. Aug. 1, 2001.]

§ 5-144. Premises where cigarettes and tobacco products illegally sold public nuisance

Any room, house building, boat, vehicle, structure, or place where cigarettes and tobacco products are knowingly sold or bartered in violation of this chapter and all property knowingly kept and used in maintaining the same is hereby declared to be a public nuisance, and any person who maintains such a nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) and be imprisoned not less than thirty (30) days or more than six (6) months.

[NCA 93-04, § 5-312, approved Jan. 7, 1993; amended by NCA 01-136, § 546, eff. Aug. 1, 2001.]

Library References

Nuisance ☞65.
Westlaw Topic No. 279.
C.J.S. Nuisances §§ 14, 16, 24, 151.

§ 5-145. Penalty for violating chapter; revocation of license

Any person violating any of the provisions of this chapter shall, upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such

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fine or imprisonment, or both, except as is herein otherwise provided. If any retail licensee is convicted of any offense under this chapter, his license shall be immediately revoked or in the discretion of the Commission such other sanction imposed as may be authorized by law.

[NCA 93-04, § 5-314, approved Jan. 7, 1993; amended by NCA 01-136, § 547, eff. Aug. 1, 2001.]

Cross References

Administrative enforcement proceeding, see Title 36, § 6-103.

Library References

Indians ⇄226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

CHAPTER 6. APPEALS OF DENIAL OF LICENSE APPLICATIONS; ENFORCEMENT ACTIONS AND APPEALS

Section

- 6-101. Appeal of Tax Commissioner denial of application for sales vendor's license or retail tobacco license.
- 6-102. Investigations and inspections.
- 6-103. Administrative enforcement proceedings.
- 6-104. Judicial review of Commissioner's decision.
- 6-105. Civil action by Tax Commissioner.
- 6-106. Service of notices and other documents.
- 6-107. Other remedies.
- 6-108. Finality of Commission decision or court action.
- 6-109. Settlements of taxes due.
- 6-110. Substitute returns prepared by Commission.
- 6-111. Forgery of stamps.
- 6-112. Offenses.
- 6-113. General penalties.
- 6-114. Referrals for federal prosecution.
- 6-115. Exclusion.
- 6-116. Cancellation of leases upon exclusion.
- 6-117. Exempt property.

§ 6-101. Appeal of Tax Commissioner denial of application for sales vendor's license or retail tobacco license

A. Denial of application for vendor's license. Any real party in interest shall have the right to appeal a decision of the Tax Commission denying an application for a vendor's license pursuant to Title 36, § 4-107.

B. Denial of application for retail tobacco license. Any real party in interest shall have the right to appeal a decision of the Tax Commissioner denying an application for a retail tobacco license pursuant to Title 36, § 5-112.

C. Appeal deadline. The applicant must appeal the Tax Commissioner's decision to deny the license application within thirty (30) days of the date of the issuance of the decision, or the Tax Commissioner's decision shall become final with no right of judicial review.

D. Notice of hearing. If an applicant appeals a denial of a license application pursuant to subsections A and B of this section, the Commissioner shall serve a Notice of Hearing by certified mail or personal service on the appealing party or the appealing party's service agent. Such Notice shall state the time and place of the hearing and shall further state that if the appealing party fails to appear and show cause why the Tax Commissioner's decision to deny the application should be reversed, the denial shall become final, without right of judicial review.

E. Hearing. The hearings authorized in this section shall be informal. The appealing party shall be afforded the opportunity to explain and/or show cause to the Commissioner why the license denial decision should be reversed. The may be represented by counsel and the Commissioner may request representation by the Office of the Attorney General. The Commissioner may render a

decision at the conclusion of the hearing or at any time thereafter. The Commissioner may, in his discretion, postpone his decision in order to further investigate the appealing party’s eligibility for a license or other matters relevant to the license application.

F. Commissioner’s decision. The Commissioner’s order and decision rendered after the hearing shall be in writing and shall state that the appealing party may seek review of the Commissioner’s decision by filing a Petition for Review of the Commissioner’s decision with the District Court of Muscogee (Creek) Nation within thirty (30) days of said decision, failing which the decision shall be final and not subject to judicial review. Judicial review shall be held pursuant to Title 36, § 6–103.

[NCA 01–136, § 601, eff. Aug. 1, 2001.]

Cross References

Cigarettes and tobacco products, appeal of denial of license, see Title 36, § 5–117.
 Revocation or suspension of cigarettes and tobacco products license, see Title 36, § 5–118.

Library References

Indians ⇨434.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 6–102. Investigations and inspections

The Tax Commissioner is hereby authorized to investigate all violations of this title which come to his attention by whatever means and to initiate enforcement proceedings in accordance with the provisions of this section. The provisions of the Notices required by this section describe the procedures applicable to all enforcement proceedings hereunder. The Commissioner is authorized to require any person, corporation, community or entity conducting business or other activities, including operation of a motor vehicle licensed by the Tax Commission, within the Muscogee (Creek) Nation territorial jurisdiction subject to taxation of any kind pursuant to this title to make the books and records related to such business or other taxable activities available to the Commissioner for review and/or audit for the purpose of determining the tax liability.

[NCA 00–149, § 4–102, approved Sept.30, 2000; amended by NCA 01–136, § 602, eff. Aug. 1, 2001.]

Cross References

Sales tax, failure to submit timely report, see Title 36, § 4–110.

Library References

Indians ⇨411.	C.J.S. Indians §§ 151 to 179.
Searches and Seizures ⇨79.	C.J.S. Searches and Seizures §§ 128 to 130,
Westlaw Topic Nos. 209, 349.	132 to 134.

§ 6–103. Administrative enforcement proceedings

A. Service of Notice. The Tax Commissioner shall initiate enforcement proceedings for any violation of this title by serving by certified mail or

personal service on the person, corporation, community or entity, or the designated service agent of said person, corporation, community or entity, a Notice of Violation.

B. Contents of Notice. The Notice shall state with reasonable particularity the nature of the violation or violations, the section or sections of this title which the respondent has violated, and the action which the respondent must take to remedy the violation(s). The Notice shall also state that all such remedial action(s) must be completed within ten (10) days failing which, the Tax Commissioner may take one or more of the actions described in subsection C of this section as appropriate to the nature of the violation. The Notice shall also state that the period for taking any remedial action may be extended for good cause at the sole discretion of the Tax Commissioner for up to sixty (60) additional days beyond the initial 10-day period, but no further extensions shall be allowed. The Notice of Violation shall also state that, in lieu of taking such remedial action, the respondent may serve on the Tax Commissioner a written Notice of Protest and Request for Hearing to demonstrate why no violation has occurred and/or why the proposed remedial action is incorrect or unauthorized in whole or in part. In cases where a respondent has failed to remit some or all of the taxes required to be collected and remitted pursuant to this title, the Notice of Violation need not include the amount owed unless the Commissioner has knowledge of the amount owed.

C. Types of enforcement actions. The Notice of Violation required in subsection B of this section shall include a description of the actions which may be taken by the Tax Commissioner and the respondent's potential liability for civil fines and criminal prosecution, as appropriate to the nature of the specific violation involved, including without limitation the penalties specified in Title 36, § 3–112 for Motor Vehicle Tax Code violations, the penalties specified in Title 36, § 4–110 for Sales Tax Code violations, the penalties specified in Chapter Five of this Title for violations of that chapter and any other penalties specified in the Criminal Offenses Code of the Muscogee (Creek) Nation.

D. Remedial action; notice of protest and request for hearing. Upon receipt of the Notice of Violation, the respondent shall take all remedial action described therein within the time allowed or, in lieu of taking such remedial action, shall serve upon the Commission the written Notice of Protest and Request for Hearing described in subsection A of this section.

E. Notice of hearing on proposed enforcement and/or penalties. In the event any respondent who or which has been served with a Notice of Violation fails to take all remedial action stated therein within the time allowed or to request a hearing as provided by subsection D of this section, the Commissioner shall serve such respondent or the respondent's service agent with a Notice of Hearing on Proposed Enforcement and/or Penalties. Said Notice shall state the time and place of the hearing, the amounts of any proposed fines or other penalties, and/or describe any other enforcement action authorized hereunder, including without limitation, revocation or suspension of any Muscogee (Creek) Nation Tax Commission license and the closure of respondent's place of business. The Notice shall also state that if the respondent fails to appear and show cause why the proposed enforcement action should not be taken or the proposed fines and/or penalties assessed, then the respondent shall be conclu-

sively deemed to have confessed to the violation(s) described in the Notice of Violation and that the proposed enforcement action and/or fines or penalties shall be taken and/or assessed against the respondent, without right of judicial review.

F. Hearing. The hearings authorized in this section shall be informal. The respondent shall be afforded the opportunity to explain and/or show cause to the Commissioner why no violation has occurred and/or why the proposed enforcement, fine or other penalty is incorrect or unauthorized under this title. The respondent may be represented by counsel and the Commissioner may request attendance by the Office of the Attorney General in an advisory capacity. The Commissioner may render his decision at the conclusion of the hearing or at any time thereafter. The Commissioner may, in his discretion, postpone his decision in order to further investigate the violation and/or formulate the appropriate enforcement action and/or fine or penalty.

G. Commissioner's decision. The Commissioner's order and decision rendered after the hearing shall be in writing and shall state, as appropriate, the following:

1. The nature of any violation(s) of this title;
2. The sections of this title violated by the respondent;
3. Whether any Muscogee (Creek) Nation Tax Commission license acquired by the respondent shall be revoked or suspended and, if so, the date on which the revocation or suspension shall be effective and the duration of any suspension so ordered;
4. The amount of any fine or penalty assessed;
5. Any other enforcement action, conditions or requirements which the Commissioner may impose consistently with this title; and
6. A statement that the respondent possesses appeal rights pursuant to this section and Title 36, § 6–104, copies of which shall be enclosed and that the respondent may seek review of the Commissioner's decision by filing a Petition for Review of the Commissioner's decision with the District Court of Muscogee (Creek) Nation within thirty (30) days of said decision, failing which the decision shall be final and not subject to judicial review.

[NCA 00–149, § 4–102, approved Sept.30, 2000; amended by NCA 01–136, § 603, eff. Aug. 1, 2001.]

Cross References

Cigarettes and tobacco products, penalty for violation, see Title 36, § 5–145.
Sales tax, payment under protest, see Title 36, § 4–108.

Library References

Indians ⇄226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149.

§ 6–104. Judicial review of Commissioner's decision

A. Petition for review. Any person, corporation, community or other entity found by the Commissioner to have violated any provision of this title after

hearing may seek review of the Commissioner's decision by filing a Petition for Review of the Commissioner's decision with the District Court of Muscogee (Creek) Nation within thirty (30) days of said decision, failing which the decision shall be final and not subject to judicial review. The Commissioner shall promptly file the full record of the proceeding with the Muscogee (Creek) Nation District Court .

B. Standard for review. In hearing the appeal, the Muscogee (Creek) Nation District Court shall give proper deference to the administrative expertise of the Commission. The Muscogee (Creek) Nation District Court 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.

C. Legal representation. The Petitioner may be represented by counsel in any proceeding or review by the District Court, and the Commissioner shall be represented by the Attorney General.

D. District court decision. The Muscogee (Creek) Nation District Court shall issue a written decision on all appeals. In no event shall the Court be authorized to award or order the payment of damages or to fashion any remedy against the Tax Commission except to order the return of the amount of the taxes, penalties, or interest in controversy unless an additional remedy is specifically provided by this title. All taxes, penalties and interest found to be wrongfully collected and refundable shall earn simple interest at five percent (5%) per annum until refunded with interest beginning on the date final determination that wrongful collection was made. In the event that the District Court affirms the decision of the Commissioner, the Court shall award costs and a reasonable attorneys fee to the Tax Commission with the provision that any part of the attorneys fee collected shall be paid to the Controller for use by the Office of the Attorney General, and it may also award any relief against the Petitioner which the Court is authorized to enter under Title 36, § 6–105.

E. Appeal to Supreme Court. If the petitioner receives an adverse decision from the District Court, then the petitioner may appeal to the Muscogee (Creek) Nation Supreme Court within thirty (30) days after the District Court enters the decision. The appeal shall be limited to the record on appeal. The decision of the Muscogee (Creek) Nation Supreme Court shall be final.

[NCA 00–149, § 4–102, approved Sept.30, 2000; amended by NCA 01–136, § 604, eff. Aug. 1, 2001.]

Library References

Indians ⇄433, 434, 440(4), 440(6), 442.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6–105. Civil action by Tax Commissioner

A. Civil action. The Tax Commissioner is hereby authorized to commence a civil action to collect any taxes, penalties, fines and/or interest owed pursuant to this title, and may seek any civil remedies, including but not limited to injunctive relief, garnishment, attachment, and execution, for the collection of any monies due to the Nation against any person, corporation, community or

entity conducting business or engaged in any other activities within the Muscogee (Creek) Nation territorial jurisdiction in violation of this title. Such actions shall be commenced in the District Court of the Muscogee (Creek) Nation and must be brought within three (3) years of the due date of any tax payment or tax return or the actual date of payment of any tax, whichever is the later, except in any case involving fraud, in which case an action must be brought within three (3) years of the discovery of the fraud. Injunctive relief may include, without limitation an order that the respondent shall cease and desist in the conducting of business or other activities in the Muscogee (Creek) Nation territorial jurisdiction in violation of this title. Violation of orders of the Court shall be punishable by civil contempt, including fines and/or, in the event that the contemnor is an Indian, imprisonment. In the event the Court awards judgment in favor of the Tax Commissioner, the Court shall award costs and a reasonable attorneys fee to the Tax Commission with the provision that any part of the attorneys fee collected shall be paid to the Controller for use by the Office of the Attorney General.

B. Action for nuisance. The Tax Commissioner is authorized to file an action to enjoin any nuisance defined by this Code or resulting from violation of this title, in the name of the Muscogee (Creek) Nation and with the assistance of the Attorney General of the Muscogee (Creek) Nation or by any other government entity authorized by the Muscogee (Creek) Nation to bring such action in Muscogee (Creek) Nation District Court. Such action shall be brought and tried as an action in equity and may be brought in any Court having jurisdiction to hear and determine equity cases. If it is made to appear, by affidavits or otherwise, to the satisfaction of the Court that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this Code constituting such nuisance. No bond shall be required in instituting such proceedings. Upon judgment of the Court ordering such nuisance to be abated, the Court may order that the room, house, building structure, boat, vehicle, or place where the nuisance occurred shall not be occupied or used for one (1) year thereafter. The Court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the Court making the order, in the penal and liquidated sum of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000), payable to the Muscogee (Creek) Nation and conditioned that the premises shall not be used for retail sales purposes and that he will pay all fines, costs, and damages that may be assessed for any violations of this Code upon said property.

[NCA 00-149, § 4-102, approved Sept.30, 2000; amended by NCA 01-136, § 605, eff. Aug. 1, 2001.]

Historical and Statutory Notes

Derivation:

NCA 93-04, § 5-313; amended by NCA 95-101, § 22.

§ 6-106. Service of notices and other documents

Any notice or other document required to be served hereunder shall be hand-delivered to the person, corporation, community or other entity to be served or sent by certified mail to the office or place of business of said person, corporation, community or other entity to be served. In the case of service by mail, service shall be complete upon the date of receipt or refusal to accept delivery by certified mail.

[NCA 00-149, § 4-103, approved Sept.30, 2000; amended by NCA 01-136, § 606, eff. Aug. 1, 2001.]

Historical and Statutory Notes**Derivation:**

NCA 86-08.

NCA 92-71, § 204.

§ 6-107. Other remedies

Any person who believes that it has overpaid taxes under this title may apply to the Commission for a refund within six (6) months of the overpayment. Any tax paid, which after a hearing pursuant to the rules and regulations adopted by the Commission 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.

[NCA 86-08, § 209, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 607, eff. Aug. 1, 2001.]

§ 6-108. Finality of Commission decision or court action

Any final finding or determination of the Commission not timely appealed, any final and unappealed determination of the Muscogee (Creek) Nation District Court, and any final Muscogee (Creek) Nation Supreme Court decision in proceedings pursuant to appeal shall be final and binding in any other proceeding against or by the same person before the Commission or the District Court of the Muscogee (Creek) Nation.

[NCA 86-08, § 211, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 608, eff. Aug. 1, 2001.]

§ 6-109. Settlements of taxes due

A. If at any time the Commission in good faith is in doubt of the liability of the taxpayer for the payment of taxes, it may compromise the liability by entering in writing with the taxpayer a settlement agreement that adequately protects the interests of the Nation.

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

C. As a condition for entering into a settlement agreement, the Commission may require the provision of security for payment of any taxes due according to the terms of the settlement agreement.

D. A settlement agreement is conclusive as to the liability or non-liability for payment of taxes relating to the periods referred to in the settlement agreement, except upon a showing of fraud, malfeasance, misrepresentation or concealment of a material fact.

[NCA 86-08, § 212, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 609, eff. Aug. 1, 2001.]

§ 6-110. Substitute returns prepared by Commission

The Commission may assess tax based on substitute returns prepared by the Commission where no timely return or report was filed by the person required to file a return or report.

[NCA 86-08, § 214, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 610, eff. Aug. 1, 2001.]

§ 6-111. Forgery of stamps

Any person who falsely or fraudulently forges, embezzles, steals, knowingly converts, knowingly misapplies or permits to be misapplied or counterfeits any stamps, tags, licenses, or other instrument evidencing payment of taxes prescribed for use in this title or who shall use, pass, tender as true, or otherwise be in possession of any unauthorized, false, altered, forged, payment of taxes imposed by the tax laws of the Muscogee (Creek) Nation shall be subject to a civil penalty of not more than one thousand dollars (\$1000.00) for each such violation in addition to any other penalties prescribed by law. Each such counterfeited, embezzled, stolen, converted, misapplied or forged stamp or other instrument shall constitute a separate violation.

[NCA 86-08, § 215, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 611, eff. Aug. 1, 2001.]

§ 6-112. Offenses

Any Indian person who violates any provisions of this title for the purpose of evading the payment of taxes imposed by this title shall be guilty of an offense 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 (\$1000.00) dollars or by both such fine and imprisonment.

[NCA 86-08, § 216, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 612, eff. Aug. 1, 2001.]

Library References

Indians ↻225, 264, 623, 624.
Westlaw Topic No. 209.

C.J.S. Indians §§ 140 to 149, 151 to 180, 183
to 187, 191 to 194.

§ 6-113. General penalties

Any person who files any false report or return, or who fails to file any report or return, or who otherwise violates any of the provisions of this Title for the purpose of evading the payment of taxes imposed by this title shall forfeit a civil penalty of not more than one thousand dollars (\$1000.00) for each such violation in addition to any other penalties prescribed by law. Penalties will not be subject to waiver except at the discretion of the Tax Commission, whether

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failure to timely report and/or pay such tax is a result of good cause and not as a result of negligence, design, or inadvertence.

[NCA 86-08, § 217, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 613, eff. Aug. 1, 2001.]

§ 6-114. Referrals for federal prosecution

It shall be the duty of all members of the Tax Commission, any Lighthorse Administration Officer, and the Attorney General, upon receiving reliable information that probable cause may exist to believe that any person has violated Title 36, § 6-111, to report the facts and circumstances known to him to the appropriate federal officials and to request that a federal investigation be commenced to determine whether 18 U.S.C. § 1163 has been violated.

[NCA 86-08, § 218, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 614, eff. Aug. 1, 2001.]

§ 6-115. Exclusion

Any natural person or any corporation, partnership, association, company, firm, joint venture, estate, or trust or other person who violates any provision of the tax laws of the Muscogee (Creek) Nation for the purpose of evading payment of taxes imposed by said tax laws, in addition to any civil penalties or the civil penalties of seizure and forfeiture imposed by this Title may be excluded from carrying on any business within the jurisdiction of the Muscogee (Creek) Nation for a period not to exceed five (5) years, by order of the District Courts of the Muscogee (Creek) Nation, provided, that such exclusion as may be imposed may be suspended by the Court conditioned upon strict compliance with all laws of the Muscogee (Creek) Nation. An order of exclusion not suspended, shall by operation of law cancel all permits, licenses, and other authority of the person to carry on any business within the Muscogee (Creek) Nation during its term.

[NCA 86-08, § 219, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 615, eff. Aug. 1, 2001.]

§ 6-116. Cancellation of leases upon exclusion

Whenever any person or business is excluded from the jurisdiction of the Muscogee (Creek) Nation and the order of exclusion is not suspended, and such person or business holds a lease to realty within the jurisdiction of the Muscogee (Creek) Nation for other than residential purposes, said lease may be canceled by the lessor within sixty (60) days of the order of exclusion at his option by sending written notice to lessee or his attorney by registered or certified mail, return receipt requested, at his last known address. A true and correct copy of the notice of lease cancellation shall be delivered by certified mail, return receipt requested, to the Superintendent of the Okmulgee Agency, the Attorney General, and the Tax Commission at the same time the notice is sent to the lessee. Such cancellation shall entitle lessor to full time use and possession of the premises and render the lease absolutely void from that date forward and shall relieve lessor and lessee from all future obligations under

such lease, provided, that such cancellation shall not relieve lessor or lessee from any obligation incurred prior to the date of cancellation.

[NCA 86-08, § 220, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 616, eff. Aug. 1, 2001.]

§ 6-117. Exempt property

The following property shall be exempt from garnishment, attachment, execution and sale for the payment of taxes, penalties, and interest, due the Muscogee (Creek) Nation:

A. Three-fourths (3/4) of the net wages earned per week by the person or an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater.

B. One automobile of fair market value equity not exceeding three thousand dollars (\$3,000.00)

C. Tools, equipment, utensils, or books necessary to the conduct of the business but not including stock or inventory.

D. Actual trust or restricted title to any lands held in trust by the United States or subject to restrictions against alienation imposed by the United States but not including leasehold and other possessory interests in such property.

E. Any dwelling used as the actual residence of the taxpayer including up to five (5) acres of land upon which such dwelling is located whether such dwelling is owned or leased by the taxpayer.

F. Household goods, furniture, wearing apparel, personal effects but not including televisions, radios, phonographs, tape recorders, more than two (2) firearms, works of art, and other recreational or luxury items.

G. All livestock, bridles and saddles.

H. All implements of husbandry used upon the homestead.

I. All ceremonial or religious items.

J. Keco and Kevpe.

[NCA 86-08, § 221, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 617, eff. Aug. 1, 2001.]

CHAPTER 7. LIQUOR AND BEVERAGE CODE

Subchapter

1. General Provisions
2. Prohibition and Conformity With the Laws of the State of Oklahoma
3. Licensing
4. Liquor and Beer Sales and Transportation
5. Taxation and Audits
6. Liability, Insurance and Sovereign Immunity
7. Enforcement

SUBCHAPTER 1. GENERAL PROVISIONS

Section

- 7-101. Findings.
7-102. Purpose.
7-103. Short title and codification.
7-104. Authority.
7-105. Definitions.
7-106. Severability.

§ 7-101. Findings

The National Council finds that:

A. It is the policy of the Nation to raise revenues through the collection of taxes for the sale and distribution of liquor and beer products within Muscogee (Creek) Nation Indian Country as defined by federal law.

B. The Nation has a duty to provide for the health, safety and welfare of its citizens.

C. As part of the Nation's responsibility to its citizens, the Nation must regulate and control the distribution, sale and possession of alcoholic beverages on Tribal lands located within Muscogee (Creek) Nation Indian Country as defined by federal law.

D. Except as otherwise required by other applicable laws of the Muscogee (Creek) Nation or by any applicable federal and state law, the provisions and requirements of this chapter and any rules, regulations and licenses authorized hereunder shall apply to the sale and distribution of liquor and beer products on properties under the jurisdiction of the Nation.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞225, 323.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149, 194.

§ 7–102. Purpose

The purpose of this Act is to regulate the sale and distribution of liquor and beer products on properties under the jurisdiction of the Muscogee (Creek) Nation and to generate an additional revenue base.

[Added by NCA 06–132, § 2, eff. June 21, 2006; amended by NCA 07–159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞225, 323.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149, 194.

§ 7–103. Short title and codification

This Act shall be known and may be cited as the Muscogee (Creek) Nation Liquor and Beverage Code and shall be codified as Chapter 7 in Title 36 “Taxation and Revenue,” of the Code of Laws of the Muscogee (Creek) Nation.

[Added by NCA 06–132, § 2, eff. June 21, 2006; amended by NCA 07–159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞225, 323.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149, 194.

§ 7–104. Authority

This Act is enacted pursuant to Article VI, § 7, of the Constitution of the Muscogee (Creek) Nation and the Congressional Act of August 15, 1953 (Pub. L. 83–277, 67 State. 588, 18 U.S.C. § 1161).

[Added by NCA 06–132, § 2, eff. June 21, 2006; amended by NCA 07–159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞225, 323.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149, 194.

§ 7–105. Definitions

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. “Alcohol” means a substance known as ethyl alcohol, hydrated oxide of ethyl or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses, sugar or other substances including all dilutions and mixtures of this substance.

B. “Beer” means any beverage containing less than or equal to three and two-tenths percent (3.2%) of alcohol by weight and obtained by the alcoholic fermentation of an infusion of decoction of pure hops, pure extract of barley or other grain, malt, sugar or similar products.

C. “Beer outlet” means the Muscogee (Creek) Nation’s licensed retail sale business selling beer within the Muscogee (Creek) Nation Indian Country as defined by federal law, including all related and associated facilities under the control of the Operator. Moreover, where an Operator’s business is carried on as part of the operation of an entertainment or recreational facility, the “beer outlet” shall be deemed to include the entertainment or recreational facility and its associated areas.

D. “Commission” means the Muscogee (Creek) Nation Tax Commission as established pursuant to MCNCA Title 36 § 1–103.

E. “Commissioner” means the Muscogee (Creek) Nation Tax Commissioner as established pursuant to MCNCA Title 36 § 1–104.A.

F. “Liquor” means the four (4) varieties of liquor commonly referred to as alcohol, spirits, wine and beer in excess of three and two-tenths percent (3.2%) of alcohol, and all fermented, spirituous, vinous or malt liquors or any other intoxicating liquid, solid, semi-solid or other substance patented or not, containing alcohol, spirits, wine or beer, in excess of three and two-tenths percent (3.2%) of alcohol, and is intended for oral consumption.

G. “Liquor outlet” means the Muscogee (Creek) Nation’s licensed retail sale business selling liquor within the Muscogee (Creek) Indian Country as defined by federal law, including all related and associated facilities under the control of the Operator. Moreover, where an Operators business is carried on as part of the operation of an entertainment or recreational facility, the “liquor outlet” shall be deemed to include the entertainment or recreational facility and its associated areas.

H. “Nation” means the Muscogee (Creek) Nation as established under the Muscogee (Creek) Nation Constitution of 1979. Chartered communities of the Muscogee (Creek) Nation are considered component, inseparable subdivisions of the Muscogee (Creek) Nation and may only benefit from the rights and privileges from the Muscogee (Creek) Nation under this chapter.

I. “National Council” means the Muscogee (Creek) Nation National Council as constituted by Article VI of the Constitution of the Muscogee (Creek) Nation.

J. “Operator” means a person twenty-one (21) years of age or older who is properly licensed by the Commission to operate a liquor and/or beer outlet.

K. “Person” means a natural person, a partnership, an association of persons, a corporation, a firm, a limited liability company, a sole proprietorship, a trust, a joint venture, a consortium, a commercial entity, a Muscogee (Creek) Nation Tribal entity, a Muscogee (Creek) Nation chartered Indian community or an Indian Tribe.

L. “Sale” means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes and means all sales made by any person, whether as principal, proprietor or as an agent, servant, or employee, association, partnership or corporation of liquor or beer products.

M. “Wholesaler” means and includes any person doing any such acts or carrying on any such business or businesses that would require such person to obtain a wholesalers license or licenses hereunder.

N. “Wholesale price” means the established price for which liquor or beer are sold to the Muscogee (Creek) Nation or any Operator by the manufacturer or distributor or other reduction.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; NCA 07-159, § 1, approved July 10, 2007; NCA 08-003, approved Jan. 28, 2008. Effective upon publication in the Federal Register.]

Library References

Indians ☞323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-106. Severability

In the event that any provision or provisions of this Act are determined by a court of competent jurisdiction to be invalid for any reason, the remaining provisions of the Act shall be deemed severable from the provision or provisions determined to be invalid and shall remain in full force and effect as though the invalid provisions had never been part of the Act.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

**SUBCHAPTER 2. PROHIBITION AND CONFORMITY WITH
THE LAWS OF THE STATE OF OKLAHOMA**

Section

- 7-201. General prohibition.
- 7-202. Possession for personal use.
- 7-203. Conformity with the Laws of the State of Oklahoma.

§ 7-201. General prohibition

It shall be unlawful to buy, sell, give away, consume, furnish or possess any liquor or beer product containing alcohol for ingestion by human beings or to appear or be found in a place where liquor or beer products are sold and/or consumed, except as allowed for under this Act and the regulations promulgated hereunder.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-202. Possession for personal use

Possession of liquor or beer products for personal use by persons over the age of twenty-one (21) years shall, unless otherwise prohibited by federal, state or Muscogee (Creek) Nation Law or Regulation, be lawful within the Muscogee (Creek) Nation Indian Country as defined by federal law, so long as said liquor

or beer product was lawfully purchased from an establishment duly licensed to sell said beverages, whether on or off the Muscogee (Creek) Nation Indian Country as defined by federal law and consumed within a private residence or at a location or facility licensed for the public consumption of liquor or beer.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-203. Conformity with the Laws of the State of Oklahoma

Federal law prohibits the introduction, possession and sale of liquor in Indian Country (18 U.S.C. § 1154 and other statutes), except when the same is in conformity both with laws of the State of Oklahoma and the Nation (18 U.S.C. § 1161). As such, compliance with this Act shall be in addition to and not a substitute for compliance with the laws of the State of Oklahoma. Operators acting pursuant to this Act shall comply with the State of Oklahoma's liquor and beer laws to the extent required by 18 U.S.C. § 1161. However, the Nation shall have the fullest jurisdiction allowed under the federal laws over the sale of liquor and beer products, and related products or activities within Muscogee (Creek) Nation Indian Country as defined by federal law.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞321 to 323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

SUBCHAPTER 3. LICENSING

Section

- 7-301. Licensing of liquor and beer outlets.
- 7-302. National Council approval of liquor and/or beer outlet locations.
- 7-303. Application for liquor and/or beer outlet licenses.
- 7-304. Liquor and/or beer outlet licenses.
- 7-305. Other business by Operator.
- 7-306. Revocation of Operator's license.
- 7-307. Discretionary review.

§ 7-301. Licensing of liquor and beer outlets

The Commission is empowered to do the following duties:

- a. Administer this Act by exercising general control, management and supervision of all liquor and beer sales, places of sales and sale outlets, as well as exercising all powers necessary to accomplish the purposes of this Act; and,
- b. Adopt and enforce rules and regulations in furtherance of the purposes of this Act and in the performance of its administrative functions.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ↻323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-302. National Council approval of liquor and/or beer outlet locations

A. National Council approval of location. The National Council shall approve all liquor and/or beer outlet locations located on Muscogee (Creek) Nation Indian Country as defined by federal law by way of Tribal Resolution prior to the Commission issuing Licenses to said outlet locations.

B. National Council location review. The National Council may refuse to approve a liquor and/or beer outlet location located on the Muscogee (Creek) Nation Indian Country as defined by federal law, pursuant to Section 7-302 of this Act, if the National Council has reasonable cause to believe that:

1. The proximity of the outlet has a detrimental effect upon a social or governmental institution established by the laws of the Muscogee (Creek) Nation; or
2. The outlet is within fifty (50) feet of a residential area; or
3. There is any other reason as provided for and by Muscogee (Creek) Nation law or regulation.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ↻323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-303. Application for liquor and/or beer outlet licenses

A. Application. Any person twenty-one (21) years of age or older may apply to the Commission for a liquor and/or beer outlet license.

B. Licensing requirements. The person applying for said license must make a showing once a year and must satisfy the Commission that:

1. He/she is a person of good moral character;
2. He/she has never been convicted of violating any laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of the gaming laws of the Nation, State of Oklahoma, any other Nation or any state of the United States;
3. He/she has never violated the laws commonly called the "Prohibition laws," as defined hereunder or under any subsequent regulations; and,
4. He/she has not had any permit or license to sell alcohol, beer or liquor as provided for in § 7-105 hereof revoked by any governmental authority within the previous one (1) year.

C. Processing application. The Commissioner shall receive and process applications and be the official representative of the Nation and the Commis-

sion in all matters related to the receipt of applications, liquor and beer excise tax collections and any other related matters. If the Commission or its authorized representative is satisfied that the applicant is suitable and a responsible person, the Commission or its authorized representative may issue a license for the sale of liquor and/or beer products.

D. Application fee. Each application shall be accompanied by an application fee to be set by regulations of the Commission.

E. Discretionary licensing. Nothing herein shall be deemed to create a duty or requirement to issue a license. Issuance of a license is discretionary based upon the Commission's determination of the best interests of the Nation. A license is a privilege, and not a property right, to sell liquor and/or beer products within the jurisdiction of the Muscogee (Creek) Nation at licensed locations, but not operate to confer on, vest in, or license any title, interest or estate in Muscogee (Creek) Nation real property.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ⇄323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-304. Liquor and/or beer outlet licenses

Upon approval of an application, the Commission shall issue the applicant a liquor and/or beer license (License) which shall be valid for one (1) year from the date of issuance. The License shall entitle the Operator to establish and maintain only the type of outlet permitted on the License. This License shall not be transferable. The Operator must properly and publicly display the License in its place of business. The License shall be renewable at the discretion of the Commission; provided that the Operator submits an application form and application fee as provided for in Section 7-303(D) of this Act.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ⇄323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-305. Other business by Operator

An Operator may conduct another business simultaneously with managing a liquor and/or beer outlet; provided if such other business is in any manner affiliated or related to the liquor and/or beer outlet and is not regulated by another entity of the Nation it must be approved by the Commission prior to the initiation. Said other business may be conducted on same premise as a liquor

and/or beer outlet, but the Operator shall be required to maintain separate account books for the other business.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-306. Revocation of Operator's license

A. Failure of an Operator to abide by the requirements of this Act and any additional regulations or requirements imposed by the Commission shall constitute grounds for revocation of the Operator's license as well as enforcement of the penalties provided for in Section 7-701 of this Act.

B. Upon determining that any person licensed by the Nation to sell liquor and/or beer is for any reason no longer qualified to hold such license or reasonably appears to have violated any terms of this license or Muscogee (Creek) Nation regulations, including failure to pay taxes when due and owing, or have been found by any forum of competent jurisdiction, including the Commission, to have violated the terms of the Nation's or the State of Oklahoma's license or of any provision of this Act, the Commissioner shall immediately serve written notice upon the Operator that he/she must show cause within ten (10) days as to why his/her license should not be revoked or restricted. The notice shall state the grounds relied upon for the proposed revocation or restriction.

C. If the Operator fails to respond to the notice within ten (10) days of service, the Commissioner may issue an Order revoking the license as the Commissioner deems appropriate, effective immediately. The Operator may within the ten (10) days period file with the Commission a written response and request for hearing before the Commission.

D. At the hearing, the Operator may present evidence and argument directed at the issue of whether or not the asserted grounds for the proposed revocation or restriction are in fact true, and whether such grounds justify the revocation or modifications of the license. The Nation may present evidence as it deems appropriate.

E. The Commission, after considering all of the evidence and arguments, shall issue a written decision either upholding the license, revoking the license or imposing some lesser penalty (such as temporary suspension or fine), and such decision shall be final and conclusive with regard to the Commission.

F. The Commission's final decision may be appealed by the Operator to the Muscogee (Creek) Nation District Court. Any findings of fact of the Commission are conclusive upon the District Court. The purposes of the District Court review are not to substitute the Court's finding of facts or opinion for the Commission's, but to guarantee due process of law. If the District Court should rule for the appealing party, the District Court may order a new hearing giving such guidance for the conduct of such as it deems necessary for a fair

hearing. In the event a party is unsuccessful before the District Court, they may exercise such appeal rights as available before the Muscogee (Creek) Nation Supreme Court. No damages or monies may be awarded against the Commission, its members nor the Nation, and its agents, officers and employees in such an action.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ⇄323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-307. Discretionary review

The Commission may refuse to grant a license for the sale of liquor and/or beer products, if the Commission has reasonable cause to believe that the license required by this Act has been obtained by fraud or misrepresentation. The Commission upon proof that said license was so obtained shall upon hearing revoke the same, and all funds paid therefore shall be forfeited.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ⇄323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

SUBCHAPTER 4. LIQUOR AND BEER SALES AND TRANSPORTATION

Section

- 7-401. Sales by liquor and beer wholesalers and transport of liquor and beer upon Muscogee (Creek) Nation Indian Country.
- 7-402. Sales by retail operators.
- 7-403. Transportation through Muscogee (Creek) Nation Indian Country not affected.

§ 7-401. Sales by liquor and beer wholesalers and transport of liquor and beer upon Muscogee (Creek) Nation Indian Country

A. Right of Commission to scrutinize suppliers. The Operator of any licensed outlet shall keep the Commission informed, in writing, of the identity of the suppliers and/or wholesalers who supply or are expected to supply liquor and/or beer products to the outlet(s). The Commission may, at its discretion, limit or prohibit the purchase of said products from a supplier or wholesaler for the following reasons: non-payment of Muscogee (Creek) Nation taxes, bad business practices, or sale of unhealthy supplies. A ten (10) day notice of stopping purchases (Stop Purchase Order) shall be given by the Commission whenever purchases from a supplier or wholesaler are to be discontinued unless there is a health emergency, in which case the Stop Purchase Order may take effect immediately.

B. Freedom of information from suppliers/wholesalers. Operators shall in their purchase of stock and in their business relations with suppliers and wholesalers cooperate with and assist in the free flow of information and data to the Commission from suppliers and wholesalers relating to the sales and business arrangements between suppliers and Operators. The Commission may, at its discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or documentary receipts of sales to the Operators. All records shall be kept according to Section 7-402(G) of this Act.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-402. Sales by retail operators

A. Commission regulations. The Commission shall adopt regulations that shall supplement this Act and facilitate their enforcement. These regulations shall include prohibitions on sales to minors, where liquor and/or beer may be consumed, persons not allowed to purchase liquor and/or beer, hours and days when outlets may be open for business and any other appropriate matters and controls.

B. Sales to minors. No person shall give, sell or otherwise supply any liquor and/or beer to any person under the age of twenty-one (21) years of age either for his or her own use or for the use of any other person.

C. Consumption of liquor and/or beer upon licensed premises. No Operator shall permit any person to open or consume liquor and/or beer on his/her premises and in his/her control unless the Commission allows the consumption of liquor and/or beer and identifies where liquor and/or beer may be consumed on Muscogee (Creek) Indian Country as defined by federal law.

D. Conduct on licensed premises.

1. No Operator shall be disorderly, boisterous or intoxicated on the licensed premises or any public premises adjacent thereto which are under his/her control, nor shall he/she permit disorderly, boisterous or intoxicated person to be thereon; nor shall he/she use or allow the use of profane or vulgar language thereon.

2. No Operator shall permit suggestive, lewd or obscene conduct or acts on his/her premises. For the purpose of this section, suggestive, lewd or obscene conduct or acts shall be those conduct or acts identified as such by federal, State of Oklahoma and/or the laws of the Nation.

E. Employment of minors. No person under the age of twenty-one (21) years of age shall be employed in any service in connection with the sale or handling of liquor or beer, either on a paid or voluntary basis.

F. Operators premises open to Commission inspection. The premises of all Operators, including vehicles used in connection with liquor and/or beer sales,

shall be open during business hours and at all reasonable times to inspection by the Commission.

G. Wholesaler's/Operator's records. The originals or copies of all sales slips, invoices and other memoranda covering all purchases of liquor and/or beer by the Operator or Wholesaler shall be kept on file in the retail premises of the Operator or Wholesaler purchasing the sales at least five (5) years after each purchase and shall be filed separately and kept apart from all other records, and as nearly as possible, shall be filed in consecutive order and each month's records kept separate so as to render the same readily available for inspection and checking. All cancelled checks, bank statements and books of accounting, covering and involving the purchase of liquor and/or beer and all memoranda, if any, showing payment of money for liquor and/or beer other than by check shall be likewise preserved for availability for inspection and checking.

H. Records confidential. All records of the Commission showing the purchase of liquor by any individual or group shall be confidential and shall not be inspected except by members of the Commission or the Nation's Attorney General's Office.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ⇄323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-403. Transportation through Muscogee (Creek) Nation Indian Country not affected

Nothing herein shall pertain to the otherwise lawful transportation of liquor and/or beer through the Muscogee (Creek) Nation Indian Country as defined by federal law by persons remaining upon public roads and highways and where such beverages are not delivered, sold or offered for sale to anyone within the Muscogee (Creek) Nation Indian Country as defined by federal law.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ⇄323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

SUBCHAPTER 5. TAXATION AND AUDITS

Section

7-501. Excise tax imposed upon distribution of liquor and/or beer and use of such tax.
7-502. Audits and inspections.

§ 7-501. Excise tax imposed upon distribution of liquor and/or beer and use of such tax

A. General taxation authority. The Commission shall have the authority to assess and collect tax on the sale of liquor and/or beer products to the purchaser or consumer. This tax shall be collected and paid to the Commission upon all liquor and/or beer products sold within the jurisdiction of the Nation. The Nation does hereby establish such a rate of six percent (6%) and may establish differing rates for any given class of merchandise, which shall be paid prior to the time of retail sale and delivery thereof.

B. Added to retail price. An excise tax to be set by the Muscogee (Creek) Nation on the wholesale price shall be added to the retail selling price of liquor and/or beer products to be sold to the ultimate consumer or purchaser in the amount of six percent (6%). All taxes paid pursuant to this Act shall be conclusively presumed to be direct taxes on the retail consumer pre-collected for the purpose of convenience and facility.

C. Tax stamp. Within seventy-two (72) hours after receipt of any liquor and/or beer products by any wholesaler or retailer subject to this Act, a Muscogee (Creek) Nation tax stamp shall be securely affixed thereto denoting the Muscogee (Creek) Nation tax thereon. Retailers or sellers of liquor and/or beer products within the Nation's jurisdiction may buy and sell or have in their possession only liquor and/or beer products which have the Muscogee (Creek) Nation tax stamp affixed to each package.

D. Use of tax revenue. Of the six percent (6%) excise tax imposed and levied hereunder, one percent (1%) shall be earmarked for expenditure on the establishment and maintenance of drug and alcohol prevention and treatment programs within the jurisdictional boundaries of the Muscogee (Creek) Nation, one percent (1%) shall be deposited in the Nation's Capital Improvements Fund Account; and the remaining four percent (4%) shall be transferred to the Muscogee (Creek) Nation Controller for deposit in to the General Fund and shall be available for appropriation by the National Council for essential government functions and/or services.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞225, 323.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149, 194.

§ 7-502. Audits and inspections

A. Inspections. All of the books and other business records of the Outlet shall be available for inspection and audit by the Commission or its authorized representative during normal business hours and at all other reasonable times, as may be requested by the Commission.

B. Bond for excise tax. The excise tax together with reports on forms to be supplied by the Commission shall be remitted to the Commission on a monthly

basis unless otherwise specified in writing by the Commission. The Operator shall furnish a satisfactory bond to the Commission in an amount to be specified by the Commission guaranteeing his or her payment of excise taxes.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞225, 323.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149, 194.

SUBCHAPTER 6. LIABILITY, INSURANCE AND SOVEREIGN IMMUNITY

Section

7-601. Liability for bills.
7-602. Muscogee (Creek) Nation liability and credit.
7-603. Sovereign immunity.

§ 7-601. Liability for bills

The Muscogee (Creek) Nation and the Commission shall have no legal responsibility for any unpaid bills owed by a liquor and/or beer outlet to a wholesaler, supplier or any other person.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-602. Muscogee (Creek) Nation liability and credit

A. Liability. Unless explicitly authorized by Muscogee (Creek) Nation statute or regulation, Operators are forbidden to represent or give the impression to any supplier or person with whom he or she does business that he or she is an official representative of the Nation or the Commission authorized to pledge Muscogee (Creek) Nation credit or financial responsibility for any of the expenses of his or her business operation. The Operator shall hold the Nation harmless from all claims and liability of whatever nature. The Commission shall revoke an Operator's outlet license(s) if said outlet(s) is not operated in a businesslike manner or if it does not remain financially solvent or does not pay its operating expenses and bills before they become delinquent.

B. Insurance. The Operator shall maintain at his or her own expense adequate insurance covering liability, fire, theft, vandalism and other insurable risks. The Commission may establish as a condition of any license, the required insurance limits and any additional coverage deemed advisable, proof of which shall be filed with the Commission.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞323.
 Westlaw Topic No. 209.
 C.J.S. Indians § 194.

§ 7-603. Sovereign immunity

Nothing in this Act shall be construed as a waiver or a limitation of the sovereign immunity of the Muscogee (Creek) Nation or its agencies, nor their officers or employees. To the fullest extent possible, the Muscogee (Creek) Nation expressly retains its sovereign immunity for the purposes of enactment of this Act.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞323, 405.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179, 194.

SUBCHAPTER 7. ENFORCEMENT**Section**

7-701. Violations and penalties.
 7-702. Repealer.

§ 7-701. Violations and penalties

Any person who violates this Act or elicits, encourages, directs or causes to be violated this Act, or Acts in support of this Act, or regulations of the Commission shall be guilty of an offense and subject to fine. Failure to have a current, valid or proper license shall not constitute a defense to an alleged violation of the licensing laws and/or regulations. The judicial system of the Muscogee (Creek) Nation shall have exclusive jurisdiction over said proceeding(s).

A. Any person convicted of committing any violation of this Act shall be subject to punishment of up to one (1) year imprisonment and/or a fine not to exceed five thousand dollars (\$5,000).

B. Additionally, any person upon committing any violation of any provision of this Act may be subject to civil action for trespass and upon having been determined by the Muscogee (Creek) Nation District Court to have committed said violation, shall be found to have trespassed upon the lands of the Nation and shall be assessed such damages as the Muscogee (Creek) Nation District Court system deems appropriate in the circumstances.

C. Any person suspected or having violated any provision of this Act shall, in addition to any other penalty imposed hereunder, be required to surrender any liquor and/or beer products in the persons possession to the officer making the complaint. The surrendered beverages, if previously unopened, shall only be returned upon a finding by the Muscogee (Creek) Nation District Court, after trial or proper judicial proceeding, that the individual committed no violation of this Act.

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D. Any Operator who violates the provisions set forth herein shall forfeit all of the remaining stock in the outlet(s). The Commission shall be empowered to seize forfeited products.

E. Any stock, goods or other items subject to this Act that have not been registered, licensed or taxes paid shall be contraband and subject to immediate confiscation by the Commission or its employees or agents; provided that within fifteen (15) days of the seizure the Commission shall cause to be filed an action against such property alleging the reason for the seizure or confiscation and upon proof, the Muscogee (Creek) Nation District Court shall order the property forfeited and vested with the Nation.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

Library References

Indians ☞323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

§ 7-702. Repealer

Any and all previous liquor and beer Acts of the Muscogee (Creek) Nation are hereby repealed, any Acts in direct conflict with this Act are hereby impliedly repealed, and this Act shall have the full force and effect as Muscogee (Creek) Nation.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 2, approved July 10, 2007. Effective upon publication in the Federal Reporter.]

Library References

Indians ☞323.
Westlaw Topic No. 209.
C.J.S. Indians § 194.

CHAPTER 8. OIL AND GAS SEVERANCE TAX CODE

Section

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- 8-102. Definitions.
- 8-103. Tax levied on oil.
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- 8-109. Purchaser may remit taxes.
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- 8-111. Measurement of oil and gas.
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- 8-113. Tax Commission may audit, correct and file reports.
- 8-114. Forms of reports.
- 8-115. Instructions.
- 8-116. Severance tax in lieu of other taxes.
- 8-117. Exclusion from taxation.
- 8-118. Lien upon oil and gas proceeds thereof.

§ 8-101. Short title and codification

This Act shall be known and may be cited as the Muscogee (Creek) Nation Oil and Gas Severance Tax Code and shall be codified as Chapter 8 in Title 36, "Taxation and Revenue," of the Muscogee (Creek) Nation Code Annotated.

[Added by NCA 08-196, § 1, approved Dec. 3, 2008, eff. Dec. 3, 2008.]

§ 8-102. Definitions

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. "Commission" means the Muscogee (Creek) Nation Tax Commission as established pursuant to MCNCA Title 36, § 1-103.

B. "Commissioner" means the Muscogee (Creek) Nation Tax Commissioner as established pursuant to MCNCA Title 36, § 1-104.A.

C. "Gas" means natural gas, coalbed methane and carbon dioxide.

D. "Gross income" means for oil and gas, the net amount realized by the taxpayer for sale of the oil and gas, whether the sale occurs at the wellhead or after transportation, manufacturing and processing of the product.

E. "Oil" means crude oil and condensate.

[Added by NCA 08-196, § 1, approved Dec. 3, 2008, eff. Dec. 3, 2008.]

§ 8-103. Tax levied on oil

There is hereby levied a tax equal to ten percent (10%) of the gross market value of all petroleum or other crude, condensate or mineral oil produced,

severed, saved and removed from any Tribal lands located within the jurisdictional boundaries of the Muscogee (Creek) Nation.

[Added by NCA 08-196, § 1, approved Dec. 3, 2008, eff. Dec. 3, 2008.]

§ 8-104. Tax levied on gas

There is hereby levied a tax equal to ten percent (10%) of the gross market value of all gas, natural gas, casing head gas and other valuable hydrocarbon substances produced, severed, saved and removed from any Tribal lands within the jurisdictional boundaries of the Muscogee (Creek) Nation.

[Added by NCA 08-196, § 1, approved Dec. 3, 2008, eff. Dec. 3, 2008.]

§ 8-105. Due date of tax

The taxes imposed by the chapter shall be due at the time the taxable substances are produced, severed, saved or removed from the Tribal lands within the jurisdictional boundaries of the Muscogee (Creek) Nation and shall be payable monthly as provided by § 8-106 of this chapter.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

§ 8-106. Payment of tax

A. Payment of severance taxes herein imposed shall be paid monthly on or before the twenty-fifth (25th) day of the calendar month following the calendar month for which such payment is to be made. Any payment not made when payable shall incur a penalty of five percent (5%) of the amount of the tax due and shall bear interest at the statutory rate until paid.

B. If any person feels aggrieved by a tax assessment, penalty or interest imposed pursuant to this chapter, such person shall file a "Reporting and Remittance Form" when due and shall pay all taxes due and shall at that time give notice in writing to the Commission that all or part of such payment is made under protest, and shall in the notice state the grounds and reasons for such protest and shall state that the total sum, or a certain part thereof, is protested. The Commission shall thereupon schedule a hearing. A person delinquent in the payment of any taxes, penalties or interest payments, including any disputed taxes, penalties or interest payments, cannot make any protest concerning any amount due, but must be current in such payments and pay the tax being protested.

C. When a producer or operator files a "Reporting and Remittance Form" and pays, in protest, the taxes levied on oil and gas by § 8-103 or 8-104 of this Title, the Commission upon determination that the protest is not frivolous shall schedule a hearing and issue proper notice wherein the purchaser or operator may appear before the Commission within thirty (30) days and show cause for protest. The Commission shall issue a written order within thirty (30) days of the conclusion of the hearing.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

§ 8-107. Payment bonds

A. Whenever any taxpayer habitually fails or refuses to file any required report or pay any taxes due on or before the last lawful date for payment, the Commission upon notice and hearing may require that the Operator post a cash or surety bond to guarantee the payment of taxes due.

B. The bond shall be in an amount determined by the Commission to be sufficient to guarantee timely payment of the taxes imposed by this chapter, provided that the amount of said bond shall not exceed the total estimated taxes which will be due in the twelve (12) month period immediately following the giving of said bond.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

§ 8-108. Incidence of tax-forfeiture for non-payment

A. The incidence of the tax herein imposed shall be upon the Lessee and his successors in interest ("Operator") and the taxes herein imposed shall be a lien upon the interest of such Operator in the lease from which the taxable substances are produced. Said lien may be foreclosed and the interest of the Operator may be forfeited and sold as possessory interests for nonpayment of taxes, subject to subsection B of this section when said taxes remain unpaid in excess of sixty (60) days after the due date for filing of the returns required in this chapter.

B. On or before thirty (30) days prior to commencement of any forfeiture proceedings, the Commission shall serve to all persons known from the Nation, State of Oklahoma, the Bureau of Indian Affairs, United States Geological Service or any other recognized record service to have an interest in such leasehold of the amount of the taxes due and unpaid, the intent of the Commission to institute forfeiture proceedings, and the right of any of such persons to pay the taxes due on behalf of the Operator and recover such payment by civil suit. Said notice shall be served by the Nation's Lighthouse Police or by certified return receipt requested United States mail deliverable to the last known address of the Operator. Publication service may be done only when the Commission has been unable to personally serve the Operator. Publication notice shall be published at least once each full calendar week during the thirty (30) day waiting period in a newspaper in general circulation in Okmulgee County, Oklahoma. Costs of all publication shall be assessed as an additional tax upon the Operator.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

§ 8-109. Purchaser may remit taxes

The purchaser of any oil or gas subject to this tax shall withhold and pay directly to the Commission on behalf of the taxpayer the severance taxes due, and such purchaser shall not be liable for the payment of said amounts as provided that said severance tax payment was made in good faith and provided further, that any taxpayer on whose behalf the purchaser has withheld and paid severance taxes may apply to the Commission for a refund of any payment alleged to be in excess of the amount due as provided by law.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

§ 8-110. Unit Operator may remit taxes

The Production Operator of any unitized pool or producing field within which the trust or restricted Indian interest has been included under any unit operating agreement approved by the Secretary of the Interior may withhold and pay the severance taxes due on that portion of the production from the units attributable to lands and interest subject to the jurisdiction of the Nation with the express or implied consent of the Lessee.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

§ 8-111. Measurement of oil and gas

A. All crude oil and liquid hydrocarbon substances normally measured in liquid form shall be measured and reported in units of either barrels of forty-two (42) U.S. gallons or two hundred thirty-one (231) cubic inches per gallon corrected to standard temperature and other variables pursuant to the federal regulations applicable to Indian oil and gas leases.

B. All natural gas and other vaporous hydrocarbon substances normally measured in gaseous form shall be measured and reported in units of one thousand (1,000) cubic feet (MCF) corrected to standard temperature and pressure pursuant to the federal regulations applicable to Indian oil and gas leases.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

§ 8-112. Determination of market value

The actual sales price of any oil or gas herein subject to taxation may, in the sole discretion of the Commission, be considered as mere evidence of or conclusive evidence of the market value of such substances. The Commission shall have the authority to determine the minimum fair market value regardless of the actual sales price of such substances and in doing so may consider actual sales prices prevailing for like or substantially similar substances produced and sold in the area and prevailing market prices published in reputable trade journals of the oil and gas industry, provided that any person, firm, corporation or association against whom additional taxes are assessed due to establishment of such minimum fair market value may protest the amount due in accordance with this chapter.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

§ 8-113. Tax Commission may audit, correct and file reports

The Commission shall have the power and authority to ascertain and determine whether or not any report herein required to be filed with it is a true and correct report of the gross products, and of the value thereof, of such persons, firms, corporation or association engaged in the mining or production of petroleum or other crude condensate or mineral oil and gas, natural gas, casinghead gas or other hydrocarbon substances. If any person, firm, corporation or association has made an untrue or incorrect report of the gross production, value or volume thereof, or has failed or refused to make a required report, the Commission shall ascertain the correct amount of either and compute said tax. In exercise of this authority, the Commission is specifically

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authorized to obtain such records as may be available from the Bureau of Indian Affairs, the United States Geological Survey, the Oklahoma Tax Commission and the Oklahoma Corporation Commission necessary for the purposes and to consider recognized trade journals in determining the market value of produced substances.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

§ 8-114. Forms of reports

The Operator Remittance Report shall be in substantially the following form:

Muscogee (Creek) Nation
Tax Commission
(Address)

OPERATOR REMITTANCE REPORT ---- OIL AND GAS SEVERANCE TAX

- 1. BIA Lease Number _____
- 2. Reporting Period _____
- 3. Lessee Name and Address _____

- 4. Date of Lease or Assignment of Lease _____
Original Lessee name _____
- 5. Unit Operator Name and Address (if unitized) and date of Unitization Agreement _____

- 6. Reporting Company Name and Address (if tax to be paid by other than Lessee or Unit Operator) _____

7. Explain your relationship to Lessee or Unit Operator

Product Production Value (Price)				
Oil	Volume	Per Unit	Gross Tax Amount	
Line	Well #	(Gas)	(BBLs or MCF)	Production Value
Rate Remitted				
A				
B				
C				
D				
E				

F

(Use Additional Sheets if necessary)

TOTAL TAX REMITTED

8. Paid by Check Number _____

Drawn On _____

Address _____

9. This report, consisting of _____ pages is submitted on behalf of _____ and has been examined by me, and under penalty of law, I hereby affirm, that to the best of my knowledge, and belief, it is a true and accurate and complete report of the severance taxes due to the Muscogee (Creek) Nation for this reporting period.

(Signature)

(Date)

(Printed Name)

[Added by NCA08-196, § 1, eff. Dec. 3, 2008.]

§ 8-115. Instructions

The following instructions shall be printed on each Operator Remittance Report:

I. General Instructions

A. Reporting period: Each calendar month is a reporting and remitting period

B. Who must report: The Lessee or Operator must report monthly on the Operator’s Remittance Report and remains responsible for appropriate reporting and remittance of taxes. However, a unit operator or purchaser may make reports and remit taxes upon application to and acceptance of the arrangement by the Commission. The Commissioner’s approval of such arrangements does not relieve the Lessee or Operator from his liability for the taxes due.

C. What wells are included in the report: Each lease must be reported on a separate form. However, all wells within a lease should, where practical, be included on the same report. Any well which is not in production during the reporting period should carry a notation explaining the status of the well, such as “shut in,” “injection well,” “salt water disposal,” or “capped and abandoned.”

D. Due date of report and remittance: Severance tax reports and accompanying remittances are due at the address designated by the Commission on the twenty-fifth (25th) day of the first calendar month following the reporting period covered by the report. There is no provision for an extension of time in which to file reports. Late payments will result in a five percent (5%) penalty. Interest on past due amounts is computed at the rate of one point sixty-six percent (1.66%) per month (twenty percent (20%) per annum). Habitual failure

to file timely reports may result in a requirement of a payment bond. FALSE OR FRAUDULENT REPORTS OR REFUSAL TO FILE REPORTS WITH THE INTENT TO EVADE TAXES MAY RESULT IN SEVERE PENALTIES INCLUDING FORFEITURE OF THE COMPANIES PRIVILEGE OF DOING BUSINESS WITHIN THE NATION'S JURISDICTIONAL BOUNDARIES.

E. Every taxpayer has the right to a full hearing before the Commission to challenge the amount of taxes, penalties or interest assessed to demand a refund of taxes paid under protest and to appeal the determination of the Commission to the Tribal Court if the taxpayer is aggrieved thereby in accordance with this chapter. To apply for a refund or credit, the taxpayer should file an amended report and petition for a refund with the Commission explaining the basis for the refund request.

II. Reporting from Instructions

A. The Lease number is the number assigned by the Bureau of Indian Affairs to the original lease from the Indian owners. Other identifying information may be included as appropriate.

B. Reporting period: The reporting period is a calendar month from its first to last day inclusive.

Insert the name of the month reported and the applicable year

C. Lessee name and address:

Insert the full name and address for the Lessee or his successor in interest (assignee). If the lease is held by a duly approved assignment that information shall be stated in the margin.

D. Date of lease or assignment to Lessee:

Insert the date of approval of the lease assignment to your company by the Bureau of Indian Affairs. If your company holds its interest by virtue of an assignment, insert the name of the original Lessee.

E. Unit operator

If the Leasehold is included in any approved common production unit or pool, insert the name and address of the unit operator and the date of approval of the unitization agreement by the Bureau of Indian Affairs.

F. Reporting company

If the report is filed by someone other than the Lessee or Unit Operator report that person or companies name and address. If the report is made by a purchaser pursuant to an approved agreement or some other party interested in the lease include all relevant information.

G. Report table

Part I Well number

Indicate the well number used for completion, production or other reports to the Bureau of Indian Affairs and the United States Geological Survey. Describe each well as clearly as possible.

Part 2 Product

Indicate either oil, gas or other substance produced.

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Part 3 Production volume

Report the barrels of oil and condensate and the MCF of gas at standard reporting parameters.

Part 4 Value

Indicate the actual sales price of the reporting company's agreed estimate of the fair market value of the substance reported whichever is higher.

Part 5 Gross value

Multiply the production volume times the value per unit production.

Part 6 Tax rate

The tax rate for both oil and gas is eight percent (8%) of the gross value of the substance produced, severed, saved or removed from the land.

Part 7 Amount remitted

To determine the amount of tax to be remitted and paid with the return, multiply the gross value of the substances produced, severed, saved or removed from the land.

Part 8–9

Insert all required information. The report must be signed by an authorized officer or employee of the reporting company. Any report not signed shall not be considered as timely filed and will be returned for signature. Any penalties and interest incurred due to any delay will be assessed as provided by law.

[Added by NCA 08–196, § 1, eff. Dec. 3, 2008.]

§ 8–116. Severance tax in lieu of other taxes

The tax levied by §§ 8–103 and 8–104 of this chapter on oil and gas respectively, shall be in lieu of all sales taxes on the first sale of such oil and gas imposed by law, and of any possessory interest taxes on said leasehold attributable to the period during which the oil and gas lease was in production.

[Added by NCA 08–196, eff. Dec. 3, 2008.]

§ 8–117. Exclusion from taxation

There shall be excluded from the provisions of this chapter the production attributable to the Indian Trust Royalty Interest of all individually owned and Tribally owned lands within the jurisdictional boundaries of the Muscogee (Creek) Nation. However, this is not to construe or convey to anyone the right to exclude this amount from the gross production taxes attributable to the Indian Trust Royalty (individually or Tribally owned lands within the jurisdictional boundaries of the Muscogee (Creek) Nation). The intent is not for the oil or gas purchaser or operator to use this as an exemption.

The Commission will impose the severance tax on the gross market value of the production attributable to the Muscogee (Creek) Nation percentage of the gross market value (individually or Tribally owned lands).

[Added by NCA 08–196, eff. Dec. 3, 2008.]

§ 8–118. Lien upon oil and gas proceeds thereof

A. The Commission shall have a lien upon the working interest share of all oil and gas produced within the Nation's jurisdictional boundaries, the proceeds upon the sale thereof and the proceeds of any other oil and gas produced within the Nation's jurisdictional boundaries attributable to a working interest owner having severance taxes due and unpaid whether arising from a well upon which payment is due or any other well, to secure payment of any oil and gas severance taxes, penalties or interest due and unpaid.

B. The lien created by this section shall be perfected by mailing a copy thereof by certified mail to the working interest owner owing said taxes, penalties or interest, and the purchaser, if different than the owner known to the Commission, and filing said lien in the office of the Secretary of the Nation.

C. The notice shall contain (1) the name of the working interest owner owing said taxes, penalties or interest and his/her last known address; (2) the name of the purchaser and his/her last known address; (3) the name or legal description of the well or wells or land upon which the well or wells upon which taxes, penalties or interest is due is located; (4) the name or legal description for the well or wells or the land upon which the well or wells are located upon the production of which the lien is attached; and (5) the amount of taxes, penalties or interest due.

D. From and after the date upon which the lien herein provided for is perfected, the purchaser shall pay over to the Commission all money in his/her hands attributable to the interest upon which the lien is attached until the lien is satisfied, and the Commission shall have the authority to seize and sell at public or private sale at any oil or gas found upon the premises to which the lien has attached in satisfaction of said lien; provided, that the exempt Indian Royalty Interest shall not be affected by said lien but shall be paid to the owner or owners thereof as if said lien did not exist, and the Commission shall protect said royalty due upon any oil or gas seized by it under this section, and pay said royalty over to those entitled thereto; and provided further, that payment of the Commission by a purchaser pursuant to this section shall be deemed payment to the working interest owner to the extent of the amount paid to the Commission.

E. Moneys paid to the Commission under this section shall be allocated as follows:

1. First, to severance taxes currently due
2. Then, to penalties and interest due and accruing upon unpaid severance taxes due
3. Finally, to principal of unpaid severance taxed due.

[Added by NCA 08–196, § 1, eff. Dec. 3, 2008.]