

ONEIDA INDIAN NATION TAX ORDINANCE

Ordinance No.: O-13-01

The Oneida Indian Nation (the “**Nation**”) adopts and enacts this tax ordinance in consideration of the terms set forth in the intergovernmental Settlement Agreement entered into by the Nation, the State of New York, the County of Madison and the County of Oneida on May 16, 2013 (the “**Intergovernmental Agreement**”). This Ordinance supersedes and replaces Ordinance No.: O-01-03 (*Oneida Indian Nation Retail Sales and Hotel Occupancy Tax Ordinance*) as amended, and its implementing rules, regulations, administrative guidelines and directives, in their entirety and Ordinance No.: O-01-03 is hereby repealed.

Article I – Purpose

1. The purpose of this Ordinance is to govern the imposition of certain taxes on sales of goods and services occurring on Nation Land (defined below), including but not limited to taxes referenced in the Intergovernmental Agreement and/or as otherwise determined by the Nation in its sole discretion, including, without limitation, with respect to sales made by Nation owned businesses or entities and/or non-Nation owned (which includes Nation Member owned) businesses or entities.
2. All taxes collected pursuant to this Ordinance shall be devoted exclusively to the provision of Nation governmental programs and services and to the discharge by the Nation of its governmental obligations, as determined by the Nation in its sole discretion. Such governmental programs, services and obligations shall be of the same type as those for which state and local governments use revenues from their tax collections.
3. As of the effective date of the Intergovernmental Agreement, the Nation shall adopt standards for the imposition of taxes that meet or exceed the standards set forth in the Intergovernmental Agreement, which specifically include certain tax laws and regulations promulgated by the State of New York, Oneida County and Madison County, as applicable (“**State Tax law**”).

Article II – The Nation Department of Taxation

1. The Nation Department of Taxation (the “**Department of Taxation**”) is hereby established as a governmental department of the Nation. A Director of Taxation shall be appointed by the Nation Representative(s), or their designee, and may be removed and replaced at any time by the Nation Representative(s) or their designee. The Director of Taxation shall be considered a governmental appointee of the Nation and, in order to avoid conflicts of interest, may not have a financial or other personal interest in any of the Nation’s wholly-owned commercial business enterprises or entities.
2. The Department of Taxation shall have the authority to interpret and implement this Ordinance and to promulgate rules, administrative guidelines, decisions and such other pronouncements as the Department of Taxation deems appropriate in order to fulfill the purposes of this Ordinance (“**Department of Taxation Rules**”), *provided*, as of the effective date of the Intergovernmental Agreement, the Department of Taxation Rules shall meet or exceed the standards set forth in the Intergovernmental Agreement. All Department of Taxation Rules are subject to review and approval by the Nation Representative(s) and/or his designee. The Department of Taxation shall have the authority to enlist the services of other public bodies and offices of the Nation as deemed necessary by the Department of Taxation to discharge its duties and responsibilities under this Ordinance.

3. Decisions or rulings of the Department of Taxation may be appealed in writing to the Tax Commission (defined below) in accordance with Article III of this Ordinance. The Tax Commission shall receive and review appeals of any Department of Taxation decisions or rulings and such Department of Taxation decisions or rulings shall not otherwise be subject to review or modification in any court, tribunal or any other authority, including those of the Nation.

4. Subject to the approval of the Nation Representative(s) or their designee, the Department of Taxation shall have the authority to hire, retain and pay staff as deemed necessary for the Department of Taxation to discharge its duties and responsibilities under this Ordinance.

Article III- The Nation Tax Commission

1. The Nation Tax Commission (the “**Tax Commission**”) is hereby established as a Nation governmental oversight commission, which shall consist of three members chaired by a Nation Tax Commissioner (the “**Commissioner**”). The Commissioner and the remaining members of the Tax Commission shall be appointed by the Nation Representative(s) for a term(s) to be determined by the Nation Representative(s). Notwithstanding the foregoing, the Commissioner and/or any member of the Tax Commission serve at the pleasure of the Nation Representative.

2. The authority, duties and responsibility of the Tax Commission shall be limited solely to the review of appeals of decisions made by the Department of Taxation. Such appeals shall be made in accordance with, and shall include such information required by, the rules promulgated by the Nation and/or such other information as may be required by the Tax Commission. The Commissioner shall have the authority to enlist the services of other governmental bodies and offices of the Nation as deemed necessary by the Commission to discharge its duties and responsibilities to review appeals of decisions of the Department of Taxation. The Tax Commission shall have no other authorities, duties or responsibilities under this Ordinance other than as set forth in this Article III.

3. A majority of the appointed members of the Tax Commission shall be required to be present in order for the Tax Commission to review and rule on an appeal of a Department of Taxation decision. A decision by the Tax Commission on any appeal of a Department of Taxation decision shall require a majority of the Tax Commission. The decision of the Tax Commission shall be final, non-appealable and shall not be subject to review or modification in any court, tribunal or any other authority, including those of the Nation.

Article IV – Imposition of Taxes

1. As of the effective date of the Intergovernmental Agreement, there is hereby imposed the following taxes upon the sale of goods and services occurring within the boundaries of Nation Land (the applicable tax rates and bases shall be set forth in the Department of Taxation Rules) and consistent with the Intergovernmental Agreement:

- A. A tax on cigarettes and tobacco products possessed, transported, sold or conveyed by any seller on Nation Land to purchasers that shall be no less than the amount prescribed in the Intergovernmental Agreement on such cigarette and tobacco products (the “**Nation Tobacco Excise Tax**”).
- B. A tax on motor fuel and highway diesel motor fuel imported, possessed, transported, sold or conveyed by any seller on Nation Land that shall be no less than the amount prescribed in the Intergovernmental Agreement on such fuels (the “**Nation Fuel Tax**”).

- C. A tax on sales of goods sold and services performed by any seller or service provider, as the case may be, on Nation Land that shall be no less than the aggregate amount prescribed in the Intergovernmental Agreement on such goods and services (the “**Nation Sales Tax**”).
 - D. A tax on the retail sale of all lodging services provided at any commercial hotel, motel or similar establishment located on Nation Land that shall be no less than the aggregate amount of the corresponding New York State state and/or local hotel or bed taxes on such lodging services (the “**Nation Occupancy Tax**”).
 - E. Any other tax, not otherwise listed here, that the Intergovernmental Agreement explicitly provides shall be imposed by the Nation on sales of goods and services on Nation Land.
2. As of the effective date of the Intergovernmental Agreement:
- A. Any taxes that are imposed under this Ordinance, and the Department of Taxation Rules implementing such taxes, shall, in accordance with the Intergovernmental Agreement, meet or exceed the standards contained in the State Tax Laws in all respects, including, without limitation, with respect to definitions, the rate and base of tax, collection and remittance of such taxes, exemptions from tax, tax holidays, enforcement, recordkeeping, reporting and registration, *provided, however*, the Department of Taxation shall promulgate special rules for the Nation and its wholly-owned business enterprises and entities with respect to any administrative, process, registration and/or reporting requirements otherwise required by the Department of Taxation Rules.
 - B. To the extent there are changes to any State Tax Laws covered by the Intergovernmental Agreement, the Department of Taxation Rules shall be modified accordingly.
 - C. If any taxes of the types listed in section 1 of Article IV of this Ordinance are decreased or eliminated by New York State subsequent to the effective date of this Ordinance, the Department of Taxation, subject to the approval of the Nation Representative(s), may decrease or eliminate the corresponding Nation tax imposed under this Ordinance.
 - D. The Department of Taxation Rules shall provide that any exemptions recognized by New York State from taxes imposed under State Tax Law shall also be recognized and accepted by the Nation under this Ordinance with respect to the corresponding Nation tax to the extent such recognition is consistent with the terms of the Intergovernmental Agreement.
3. Upon enactment of this Ordinance, and in addition to any types of taxes or Department of Taxation Rules imposed pursuant to sections 1 and 2 of Article IV of this Ordinance, the Department of Taxation may impose such other types of taxes and Department of Taxation Rules and establish such tax rates as it may determine reasonable and appropriate in furtherance of the Nation’s governmental interests, *provided*, that any such taxes, Department of Taxation Rules, and tax rates shall be subject to prior approval by the Nation Representative(s) or his duly appointed designee and, as of the effective date of the Intergovernmental Agreement, shall not be inconsistent with the provisions of this Ordinance that apply upon the effective date of the Intergovernmental Agreement.
4. Notwithstanding anything to the contrary contained in this Ordinance, upon enactment of this Ordinance, with respect to in-person retail sales occurring on Nation Land, the Nation, or any entity owned directly or indirectly by the Nation, may exclude the amount of any taxes imposed under this Ordinance, including, without limitation, those taxes imposed under Section 1 of this Article IV, from sales made to an individual enrolled in a Federally recognized Indian tribe who shows evidence of enrollment at the time of sale (the “**Tribal Membership Exemption**”), *provided, however*, with respect

to in-person retail sales of cigarettes occurring on Nation Land, the Tribal Membership Exemption shall be limited to ten (10) cartons of cigarettes per week per individual (in any given week).

5. For purposes of this Ordinance, “Nation Land” shall have the meaning ascribed to such term in the Intergovernmental Agreement.

Article V – Nation Cigarette Minimum Pricing & Tax Stamp

1. As of the effective date of the Intergovernmental Agreement:
 - A. to the extent that New York State mandates any minimum prices for the possession, transportation, sale or conveyance of cigarettes throughout the State of New York, the Nation shall also impose minimum prices for the possession, transportation, sale or conveyance of those same cigarettes sold by any seller on Nation Land (“Nation Minimum Prices”), which such Nation Minimum Prices shall be calculated in the same manner as the corresponding minimum prices required by New York State.
 - B. Notwithstanding any of the foregoing, in accordance with the Intergovernmental Agreement, the Department of Taxation Rules shall provide that for purposes of establishing minimum prices for cigarettes directly manufactured by the Nation (including by any of the Nation’s wholly-owned businesses or entities) or by any other Native American nation, tribe or individual, the basic cost of cigarettes shall be at least 60% of the average manufacturers’ list price, before trade or rebates, of the top three brands by market share, or such other formula upon which the Nation and the State may, from time to time, agree.
 - C. A Nation cigarette tax stamp shall be affixed on all cigarettes sold by any seller on Nation Land to verify compliance with the requirements of this Ordinance, the Department of Taxation Rules and the Intergovernmental Agreement.

Article VI – Interpretation

1. The Nation does not, by enacting this Ordinance, waive in any respect its sovereign immunity, or that of its agents or officers, in any manner, under any law, for any purpose, or in any place.
2. This Ordinance is not subject to review or modification in any state or federal court or by an authority outside the Nation and is not subject to review or modification in any Nation court. Nothing in this Ordinance shall constitute, or be construed as, the Nation’s consent to the extension of jurisdiction by the State of New York or by any municipality over matters coming within the purview of this Ordinance.
3. This Ordinance does not create any right, cause of action or benefit enforceable at law or in equity by any person against the Nation, its agents, its officers or employees, or any other person.

Article VII – Effective Date

This Ordinance is effective upon its enactment.

Enacted this 10th day of October, 2013.


Ray Halbritter
Nation Representative(s)