

# AK-CHIN SALES TAX ORDINANCE

## SECTION 1 - AUTHORITY

This Ordinance is adopted pursuant to Article VIII, Section 1 of the Articles of Association of the Ak-Chin Indian Community, which were approved by the Secretary of the United States Department of Interior on December 20, 1961.

## SECTION 2 - TITLE

This Ordinance shall be known as the "Ak-Chin Sales Tax Ordinance," but is referred to simply as "Ordinance" herein.

## SECTION 3 - DEFINITIONS

- 3.1 **"Business"** includes all activities or acts engaged in or caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, but not casual activities or sales. A casual activity or sale occurs when a person engages in an isolated transaction that is not conducted with such frequency or is not one of a series of activities as to be sufficient to consider the person as regularly conducting the activity.
- 3.2 **"Consumer"** means any person who uses, stores, distributes or otherwise consumes in the Community personal property purchased from sources inside or outside the Community and the person who is liable for any tax imposed by this Ordinance.
- 3.3 **"Consumption"** means the act or process of consuming; it includes waste, destruction or use. Consumption is the normal use of property for the purpose for which it was intended.
- 3.4 **"Community"** means the Ak-Chin Indian Community, a federally recognized Indian tribe organized under the Indian Reorganization Act, 48 Stat. 984, 25 U.S.C. § 461 *et seq.*
- 3.5 **"Council"** means the Ak-Chin Indian Community Council.
- 3.6 **"Gross Proceeds of Sale"** means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind, or losses, but cash discounts allowed and taken on sale shall not be included as gross proceeds of sale.
- 3.7 **"Member"** means an enrolled member of the Community.
- 3.8 **"Person"** includes an individual, officer, agent, partnership, joint venture, association, corporation, limited liability company, estate, trust or any other

entity, group or combination thereof acting as a unit, including any government entity, and the plural as well as the singular number.

- 3.9 **"Resale"** means the sale of tangible personal property to a person other than the intended end user or consumer.
- 3.10 **"Reservation"** means any land within the exterior boundaries of the Ak-Chin Indian Community Reservation and any land outside such boundaries held in trust for the Community or any of its members by the United States of America.
- 3.11 **"Retailer"** means any person selling, leasing or renting tangible personal property at retail. Retailer shall include, but is not limited to, any:
  - 3.11.1 Auctioneer;
  - 3.11.2 Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains the property sold from a dealer, distributor, supervisor or employer;
  - 3.11.3 Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes
- 3.12 **"Sale"** means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, of tangible personal property, for consideration, and includes:
  - 3.12.1 Any transaction whereby the possession of property is transferred but the retailer retains the title as security for the payment of the price.
  - 3.12.2 The fabrication of tangible personal property for persons who furnish either directly or indirectly the materials used in the fabrication work, and the furnishing, preparing or serving for a consideration of any tangible personal property consumed on the premises of the retailer furnishing, preparing or serving such tangible personal property.
- 3.13 **"Sale at Retail"** or **"Retail Sale"** means a sale for any purpose other than resale in the form of tangible personal property, except for the following:
  - 3.13.1 Sale of food for human consumption at home; provided, however, that this exemption does not include sale of prepared food, which is taxable.

- 3.13.2 Gross proceeds of sales from activities specifically subject to tax under other provisions of law, such as the Ak-Chin Law and Order Code, unless otherwise stated.
- 3.13.3 Sales of tangible personal property made directly to the United States Government, its departments or agencies.
- 3.13.4 Sales of tangible personal property for resale and not as a Retail Sale or not to an ultimate consumer.
- 3.13.5 Services provided in connection with Retail Sales, if invoices to the customer, sales tickets, cash register tapes, and all other business records show separate charges for such services, but this exemption shall apply only where such service is not customarily included in the Retail Sale itself and where such service is not an essential element in the Retail Sale itself, and no deduction shall be allowed for fabrication labor of retail items sold.
- 3.13.6 Sales of tangible personal property made directly to the Community, or any department, agency, entity or enterprise wholly-owned or controlled by the Community.
- 3.13.7 Sales of articles used by human beings for food, drink or condiment, or articles of jewelry, craftwork or art, where such articles are sold by a person acting as a traveling merchant, food seller, peddler or otherwise without an established place of business.
- 3.13.8 Sales of motor fuel or use fuel upon which a tax is paid to the State of Arizona under the provisions of A.R.S. § 28-5601, *et seq.* or A.R.S. § 28-5702, *et seq.*
- 3.13.9 Sales of tangible personal property consisting of machinery, equipment or transmission lines used directly in the production or transmission of electrical power, but not including distribution and, in addition, transformers and control equipment used at transmission substation sites.
- 3.13.10 Sales of tangible personal property by a church or by a charitable organization recognized as tax exempt under Section 501(c)(3) of the federal Internal Revenue Code.
- 3.13.11 Professional services, instruction and other services not connected with the making of retail sales.

- 3.13.12 Sales of livestock, cotton, cottonseed, wheat, barley, or hay.
  - 3.13.13 Charges for actual freight costs incurred on the shipment of tangible personal property to the consumer.
  - 3.13.14 Sales of a motor vehicle to a member residing on the Reservation and exclusively for non-business related purposes.
  - 3.13.15 Gross proceeds of sale arising from the business of gaming on the Reservation.
  - 3.13.16 Sales taxed under other specific provisions of the Ak-Chin law, including, but not limited to, the Hotel Occupancy Tax, Possessory Interest Tax, Indian Reservation Tobacco Tax, or gasoline taxes.
  - 3.13.17 Sales to members if the member presents a valid Community Enrollment card at the point of sale.
- 3.14 **"Tangible Personal Property"** means personal property which may be seen, weighed, measured, felt, touched or is in any other manner perceptible to the senses, including the granting of a revocable license such as theatre tickets or greens fees. Stocks, bonds and other securities are intangible property, not tangible property.
- 3.15 **"Tax Auditor"** means the person the Council designates to carry out any provisions of this Ordinance.

**SECTION 4 - INTENT OF TAX**

- 4.1 Unless a transaction is expressly exempted by this Ordinance, it is the intent of the Community that, to the extent permitted by law, every person who: 1) purchases, leases, rents, consumes, or otherwise acquires or acquires rights to tangible personal property, or 2) stores, uses, distributes, or consumes tangible personal property shall be taxed.
- 4.2 Unless a transaction is expressly exempted by this Ordinance, it is the intent of the Community that, to the extent permitted by law, every retailer who is engaged in business in the Community shall collect the tax imposed by this Ordinance from the consumer of tangible personal property.

**SECTION 5 - TAX IMPOSED**

A tax is imposed on a consumer who purchases, leases, rents, uses, stores, distributes, or consumes tangible personal property. Consumers shall pay a tax

based upon the amount paid for the tangible personal property. Taxable sales include, but are not limited to, sales made in following categories of sales:

- 5.1 GENERAL RETAIL SALES – a tax shall be collected from every consumer purchasing leasing, renting or licensing any tangible personal property.
- 5.2 ALCOHOL – A tax may be collected from every consumer purchasing alcoholic beverages.
- 5.3 AMUSEMENTS, EXHIBITIONS AND SIMILAR ACTIVITIES - A tax shall be collected from every consumer paying for a license to engage or partake in amusements, exhibitions, and similar activities. By way of example and not limitation, such activities include: theaters, movies, live musical or theatrical performances, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, sports events, driving ranges, animal rides, dance halls, boxing matches, health clubs, spas or any other business charging admission for exhibition, amusement, or entertainment.
- 5.4 RESTAURANTS AND BARS – A tax shall be collected from every consumer purchasing prepared food or nonalcoholic beverages for consumption on or off the premises. By way of example, and not limitation, purchases of prepared food include food or beverages in a bar, cocktail lounge, restaurant, cafeteria, dining room, lunch counter, snack bar, soda fountain, catering service or similar establishment where articles of food or drink are sold for consumption on or off the premises. Cover charges and minimum charges are also subject to taxation. The tax shall not apply to sales of food or nonalcoholic beverages at schools, hospitals, daycare facilities, or jails or correctional facilities.

**SECTION 6 - RATE OF TAX**

The rate of tax imposed by this Ordinance on each taxable sale, including on those taxable sales described in Section 5, shall be set by the Council by resolution.

**SECTION 7 - COLLECTION OF TAX**

A retailer shall collect for the Community the tax that is imposed by this Ordinance and that is calculated on the amount paid.

**SECTION 8 - EXCEPTION: COMMUNITY GOVERNMENT, ENTERPRISES, AND POLITICAL SUBSIDIARIES**

Nothing in this Ordinance shall be construed as imposing a tax or penalty on the government of the Community or any of its enterprises or political subsidiaries.

**SECTION 9 - TRUST STATUS OF TAX**

- 9.1 All sums of money paid by the consumer to the retailer as taxes imposed by this Ordinance shall be and remain public money and the property of the Community in the hands of the retailer. The retailer shall hold the money in trust for the sole use and benefit of the Community until paid to the Community. It shall be unlawful for any retailer to fail or refuse to pay these sums to the Community.
  
- 9.2 If a retailer is suffering financial difficulty, or is delinquent in making payment of sales tax collected, or is apparently using tax money collected for individual purposes, the Community may recommend, and the Council may require, that the trust funds be kept segregated in a special account at a bank or other financial institution. Withdrawals from the segregated account shall only be payable to the Community, which shall be authorized to make withdrawals from the account.

**SECTION 10 - UNLAWFUL TO FAIL TO COLLECT OR PAY TAX**

It is unlawful for any consumer to fail to pay and for any retailer to fail to collect the tax required to be paid or required to be collected by this Ordinance.

**SECTION 11 - RETURN AND PAYMENT**

On the last day of each period, a retailer required to collect the tax imposed by this Ordinance shall pay the Community the tax collected during the preceding period, and at the same time shall file with the Community a return stating:

- 11.1 The total amount of retail sales made by the retailer during the period;
  
- 11.2 The amount of the tax collected by the retailer during the preceding period; and
  
- 11.3 Any other information that the Community requires to be included in the return form adopted and approved by the Council.

**SECTION 12 - RECORDKEEPING**

Records required to be kept must be preserved for seven (7) years beyond the time payment of tax is made, or if no payment is due, for seven (7) years beyond the end of the period to which the records relate.

**SECTION 13 - PENALTIES FOR FAILURE TO FILE**

- 13.1 If a retailer fails to timely file a return by the time due, a penalty of ten percent (10%) of the tax due for the period or one hundred dollars (\$100), whichever is greater, shall be assessed against the retailer.

13.2 For each full month the return is overdue, an additional penalty of one percent (1%) of the tax due for the period or one hundred dollars (\$100), whichever is greater, shall be assessed.

13.3 For good cause shown, the Community may, in its discretion, relieve the retailer from all or part of the penalties imposed under this Section.

#### **SECTION 14 - PENALTIES FOR FAILURE TO PAY**

14.1 A retailer failing to timely pay an amount of tax under this Ordinance by the time due shall be assessed a penalty of five percent (5%) of the amount of the underpayment.

14.2 For each full month the payment is overdue, an additional penalty shall be assessed of one-half percent (0.5%) of the underpayment.

14.3 For good cause shown, the Community may, in its discretion, relieve the retailer from all or part of the penalties imposed under this Section.

#### **SECTION 15 - SEVERABILITY**

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

#### **SECTION 16 - EFFECTIVE DATE**

This Ordinance is effective retroactive to November 16, 2012.

#### **SECTION 17 - WAIVER OF TAX**

The Community may, in its sole discretion, waive imposition of the tax or interest provided for and described in this Ordinance for taxes due and payable from the effective date through February 28, 2013.

#### **SECTION 18 - REPEALS**

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this Ordinance are hereby superseded, including, without limitation, any law purporting to waive any right of taxation by the Ak-Chin Community.

#### **SECTION 19 - DEDUCTIONS**

A retailer may deduct from the gross proceeds of sale the following:

19.1 The actual dollar amount of goods, wares or merchandise refunded to customers when such items are returned by customers and both: 1) the sale price is refunded either in cash or by credit, and 2) the proceeds of sale were previously taxed.

19.2 The actual dollar amount of discounts on goods, including promotional or complimentary goods, given by the retailer; provided that, the retailer does not deduct such amounts from its reported gross proceeds of sales when reporting the gross proceeds of sales to the Community pursuant to this Ordinance.

## **SECTION 20 - GENERAL EXEMPTIONS**

Sales or activities in interstate or foreign commerce or otherwise, when prohibited from being so taxed by the Constitution or general laws of the United States of America, shall be exempt from taxation under this Ordinance.