

**WHITE MOUNTAIN APACHE**

**TAX CODE**

Revised 4/8/98

**WHITE MOUNTAIN APACHE**

**TAX CODE**

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**WHITE MOUNTAIN APACHE  
TAX CODE**

NOTE: The White Mountain Apache Tax Code is derived from Ordinance 159, enacted April 27, 1988.

**PART I  
TAX ADMINISTRATION REGULATIONS**

**CHAPTER ONE  
GENERAL PROVISIONS**

**SECTION 1.1      TITLE**

This Part I is called the Tax Administration Regulations.

**SECTION 1.2      ADMINISTRATION**

The White Mountain Apache Tax Commission is empowered to administer the tax laws of the White Mountain Apache Tribe and, to that end, will adopt rules and regulations, both substantive and procedural, orders implementing its decisions, rulings, and instructions, such as may be necessary to the proper and efficient administration of those laws.

**SECTION 1.3      DEFINITIONS**

Subject to additional definitions (if any) contained in the subsequent paragraphs of this chapter and in the other chapters of the Tax Code, and unless the context otherwise requires, in the regulations and in the other chapters of the Tax Code --

- A.    **"Apache"** means an enrolled member of the White Mountain Apache Tribe.
- B.    **"Assessment date"** means each January 1st.
- C.    **"Business"** means a business, as defined in Section 11.4.
- D.    **"Chapter"** means the regulations and the Tribal Tax Code, including, respectively: The Business Activity Tax, §§ 11.4 - 11.45; The Possessory Interest Tax, §§ 3.1 - 3.17; and such other chapters as the Tribal Council may enact into law and such other regulations the Commission may adopt as regulations.
- E.    **"Commission"** means the White Mountain Apache Tax Commission or its delegates as provided in §§ 2.8 and 2.9.
- F.    **"Control"** means the right, or any kind of ability to direct the performance or activity of another person, direct or indirect, whether legally enforceable or not and however such right may be exercisable or exercised.

G. **Director or Executive Director** means the Executive Director of the White Mountain Apache Tax Commission.

H. **"Fraud"** has the same meaning as that established in the interpretation of Section 7206 of the United States Internal Revenue Code of 1954, as amended and renumbered.

I. **"Individual"** means a natural person.

J. **"Interest"** means rights in a lease, as defined in Section 12.4.

K. **"Lease"** means any agreement conferring rights in tribal lands, as defined in Section 12.4.

L. **"Levy"** means seizure and distraint by any means.

M. **Reserved.**

N. **"Owner"** means any person who owns an interest in a lease, as defined in Section 12.4.

O. **"Period"** means a calendar quarter.

P. **"Person"** means an individual, or any group of individuals, however associated; it means an organization of any kind, whether organized for profit or not and regardless of the manner or form in which its affairs are conducted, whether it be a sole proprietorship, partnership, joint venture, trust, estate, an unincorporated association, a corporation, or a government; it means any part, subdivision or agency of any of the foregoing; and, it means any combination of individuals or organizations in whatever form, e.g., partnership, joint venture, or syndicate.

Q. **Reserved.**

R. **"Related persons"** means two or more person owned or controlled, directly or indirectly, by the same person and, as applied to individuals, means two or more individuals who have a legal relationship arising out of marriage, adoption, or blood, through the third degree of kinship.

S. **"Return"** means the declaration, report, or return required to filed under a chapter.

T. **"Tax"** means the tax imposed by a chapter of the Tax Code.

U. **"Taxes"** means the tax, and any interest, penalty, or costs, imposed by or assessed under a chapter of the Tax Code.

V. **"Taxpayer"** means an owner, or a business, or any other person who is liable for taxes imposed or assessed.

W. **"Tribal Council"** means the Tribal Council of the White Mountain Apache Tribe.

#### **SECTION 1.4 ASSESSMENT OF TAXES**

The tax imposed on possessory interest is assessed each year as of the assessment date, pursuant to Chapter Twelve.

#### **SECTION 1.5 LIABILITY FOR TAXES**

Taxes assessed are the liability of the taxpayers.

A. **Owners of a lease.** Owners of interests in a lease shall be jointly liable for the taxes assessed with respect to a lease and shall be severally liable for such taxes in proportion to their interests in the lease on the assessment date. The Commission in its discretion, and with the consent of all such owners, may relieve one or more of them from personal liability if it determines that the taxes are adequately secured by the lease, the personal liability of remaining owners, or any bond it may require to be posted.

B. **Part of another.** If a taxpayer is a corporation or a trust or a part thereof, then the corporation or trust shall be liable for the taxes. If a taxpayer is an association, joint venture, or partnership, or a part thereof, then all associates, participants, or partners both general and limited, shall be jointly and severally liable for the taxes.

C. **Right of contribution.** Subject to alteration by agreement between them, any owner, associate, participant, or partner shall have a right of contribution from any other owner, associate, participant, or partner for its proportional share of taxes paid.

#### **SECTION 1.6 NONDISCRIMINATION**

No provision of this chapter will be construed as imposing a tax which discriminates on the basis of whether the person on which the tax is imposed is an Apache or the taxable property or person is owned or controlled by Apaches.

**CHAPTER TWO**  
**WHITE MOUNTAIN APACHE TAX COMMISSION**

**SECTION 2.1      COMMISSION ESTABLISHED**

The White Mountain Apache Tax Commission is established as a part of the Executive Branch of the Government of the White Mountain Apache Tribe.

**SECTION 2.2      REVIEW REVENUE SOURCES**

The Commission will review all of the sources of wealth and income within the Fort Apache Indian Reservation and the possible revenues from the taxation of those sources.

**SECTION 2.3      RESOLUTIONS TO LAY AND COLLECT TAXES**

The Commission from time to time will submit to the Tribal Council proposed resolutions to lay and collect taxes on property both tangible and intangible, on income from whatever source derived, and on sales, inventories, and wages completed or earned, and other measures of economic activity or engagement within the Fort Apache Indian Reservation; the Commission will oversee tax policy and the administration of the tax laws; and, the Commission will present what recommendations it may have regarding the wealth, income, and revenues of the White Mountain Apache Tribe and the fiscal policy of the government of the White Mountain Apache Tribe.

**SECTION 2.4      ADOPTION OF RULES AND REGULATIONS**

The Commission will adopt such other rules and regulations as it deems necessary for its proper functioning, to interpret and execute its authority, to interpret and enforce the tax laws, to establish the manner and means for compliance with those laws, and to set forth the requirements for the administration of taxes and the general tasks and responsibilities of the Commission and its offices.

**SECTION 2.5      COMMISSION MEMBERSHIP**

Commission membership comprises three commissioners, at least two of whom must be Apaches residing within the Fort Apache Indian Reservation.

**SECTION 2.6      APPOINTMENT OF COMMISSIONERS**

Commissioners are selected, confirmed, and appointed as follows:

- A.    Nomination.    The Chairman of the Tribal Council will select and nominate

an individual qualified according to § 2.5.

B. Confirmation. Upon the confirmation of the Tribal Council, the nominee is appointed to serve as a commissioner.

C. Three-year term. A commissioner's term of office will be three years, except that --

(1) In order to establish the staggered expiration of terms among the commissioners, of the first group of appointees: one will be appointed for one year; one for two years; and one for three years; and

(2) Any appointment which does not begin coincident with this scheme will be shortened to the time necessary to maintain the pattern of staggered expirations.

D. Vacancy: Interim Appointment. A vacancy in the Commission, whether caused by death or incapacity, disqualification, resignation, or removal, will be filled as set forth in this paragraph.

## SECTION 2.7 CONDUCT OF COMMISSION BUSINESS

The business of the Commission will be conducted by a quorum of its members, at meetings duly called by its presiding officer or the Executive Director.

A. Quorum. A quorum comprises two commissioners and any substantive action must be taken by the affirmative vote of at least two commissioners.

B. Delegation. The commissioners from time to time may select a presiding officer and may delegate specific duties among themselves.

C. Resolution. Any substantive action of the Commission will be recorded in a written resolution certified by the presiding officer.

## SECTION 2.8 COMMISSION OR ITS DELEGATE

Except for matters specifically reserved to itself pursuant to §§ 3.1 A, 4.1, 4.3, 6.7 and 9.3, Commission means the Commission or its delegate. Delegates of the Commission are the Executive Director and any other representative who is acting within the scope of his or her authorization, delegation, or duty.

**SECTION 2.9****OFFICE OF THE DIRECTOR**

The Commission hereby delegates to the Office of the Director of the White Mountain Apache Tax Commission authority to administer the tax laws of the White Mountain Apache Tribe according to the regulations and the general instructions of the Commission. The Executive Director shall exercise the powers granted to this office and conduct its affairs as a part of the executive branch of the government of the White Mountain Apache Tribe, and may employ or engage those persons qualified by education and experience necessary to discharge the duties of the office and may delegate authority and duties among such persons. In this chapter, the Executive Director is called the Director. The Director is appointed by the Chairman of the Tribal Council.

**CHAPTER THREE  
REGULATIONS AND RULING**

**SECTION 3.1      ADOPTION OF REGULATIONS**

The Commission from time to time will adopt and promulgate regulations. in accordance with the rules in this section and § 3.2.

A.    Formal Adoption.    Regulations means those adopted in a resolution by a majority vote of the Commission.

B.    Manner of Amendment.    Regulations will be amended in the same manner as they are adopted and promulgated.

C.    Proposed Regulations.    See § 3.3 regarding procedures for the proposal of regulations.

**SECTION 3.2      PROMULGATION OF REGULATIONS**

Following their adoption by the Commission in accordance with § 3.1 A, regulations will be promulgated according to these rules.

A.    Notice Required.    Regulations will be effective only upon the publication of a notice in accordance with subsection B.

B.    Publication Defined.    Publication means to publish in the Apache Scout for three consecutive publications and to send by mail to designated individuals on the basis of a registration list which is reasonably current. The notice will identify or otherwise describe the subject regulations.

C.    Effective Dates.    Regulations become effective thirty (30) days after the first publication of notice or on the dates otherwise specified therein.

D.    Availability of Text.    A copy of the regulations will be filed and made available for public inspection at the Office of the Director and will be mailed to any person making a written request.

**SECTION 3.3      PROPOSAL OF REGULATIONS**

The Commission may publish proposed regulations in order to provide interested parties an opportunity to comment. Notice of the proposal will be published and the text made available according to § 3.2. The notice will invite written comments and give a deadline for their submission not less than thirty (30) days after the first publication of notice. The Commission may choose to hold a public hearing; then, it will announce the time and place at which oral testimony will be heard.

## **SECTION 3.4      PUBLIC RULINGS AND ADVICE**

The Commission from time to time may publish general rules, procedures, and advice for the information and guidance of taxpayers and, in preparation, may inquire of persons regarding relevant facts, comments and proposals, providing such persons a reasonable time for their submission. Notice of rulings and advice will be published and the text made available pursuant to § 3.2.

## **SECTION 3.5      REQUESTS FOR PRIVATE RULING**

In connection with determining any obligation under this chapter, a taxpayer, designee, or representative may request a private ruling.

A.     Authority. The Commission has discretionary authority to issue declaratory rulings concerning the validity or application of the tax laws, the regulations, and other rules with respect to any property, person, or state of facts. This discretion will be exercised in light of all relevant circumstances, including the business or other reasons which motivate the transaction or request, and with a view to issuing rulings to the extent consistent with the proper and efficient administration of the tax laws, except, that no ruling will be given in any matter already under examination or appeal.

B.     Form of Request. The request must be made in writing at the Office of the Director, must state with particularity the ruling sought, and must contain a complete statement of the facts relied on, together with any information and documents necessary to present those facts.

C.     Effect. Private rulings are binding on the Commission with respect to the facts and issues presented and ruled upon, but only as to the subject property or the person requesting the ruling.

## **SECTION 3.6      RULES OF APPEAL PROCEDURE**

In addition to the general rules and procedure provided in this chapter, the Commission may by ruling, or in regulations, establish rules of procedure for the conduct of administrative hearings and appeal proceedings in an effective manner comporting with due process.

## **SECTION 3.7      COLLECTION PROCEDURE**

In addition to the general rules and procedures provided in this chapter, the Commission may by ruling, or in regulations, establish the guidelines and procedure for the exercise of its power to attach and seize assets and the performance of its other collection duties in an effective manner comporting with due process.

**SECTION 3.8      EXAMINATION PROCEDURE**

In addition to the general rules and procedures provided in this chapter, the Commission may by internal policy and rules established the guidelines and procedures for the exercise of investigative authority and the conduct of inspections, examinations, and field and office audits.

**SECTION 3.9      INTERNAL POLICY MATTERS**

In addition to the general rules and procedures provided in this chapter, the Commission may by internal policy and rules, establish the guidelines and procedures for conducting its business, administering the tax laws, organizing and operating its officers, and for effectively discharged its duties and responsibilities.

**CHAPTER FOUR  
GENERAL RULES AND PROCEDURE**

**SECTION 4.1      ASSISTANCE AGREEMENTS**

The Commission is authorized to negotiate mutual assessment and collection assistance agreements with any other tax jurisdiction. The agreements so negotiated will come into force upon ratification by the Tribal Council.

**SECTION 4.2      AUTHORITY TO ABATE**

In response to a written request but before any court acquires jurisdiction in the matter, or at any time when an assessment is found to be incorrect, the Commission may abate any part of an assessment which it determines was in correctly, erroneously, or illegally made.

A.    Form of Request.    The request for an abatement must be made in writing to the Office of the Director, state the abatement sought, and must contain a complete statement of the facts relied on, together with any information and documents necessary to present those facts.

B.    Compromise.    Upon the compromise of a liability and according to the terms of the closing agreement formalizing the compromise, the Commission will cause the abatement of the appropriate amount of the assessment.

C.    Public Record.    Abatements in excess of \$1,000 will be recorded in the Office of the Director in a form available for public inspection. The record shall be maintained for a minimum of six (6) years after the date of abatement.

**SECTION 4.3      CLOSING AGREEMENTS**

If at any time after a final assessment of taxes, the Commission in good faith is in doubt of the liability of the taxpayer for the payment thereof, it may compromise the liability by entering with the taxpayer into a written closing agreement that adequately protects the interest of the White Mountain Apache Tribe, provided that the agreement will be subject to approval by the Tribal Attorney of the White Mountain Apache Tribe.

A.    Stipulation.    Provided that, if entered into after a court acquires jurisdiction over the matter, the closing agreement must be made part of a stipulated order or judgment disposing of the case.

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

C. Conclusive. A closing agreement is conclusive as to the liability or nonliability for payment of taxes for the assessment dates or periods referred to in the agreement, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

#### SECTION 4.4 CONFIDENTIALITY RULE

Information received by the Commission is protected under the following disclosure rules.

A. Public Information. Nothing in this paragraph is intended to prevent the publication or disclosure of the names and addresses of registered taxpayers or general information which is otherwise in the public record or generally available to the public upon the making of a reasonable inquiry.

B. Non-Disclosure. Information supplied by a person in response to a request, or included in any return or form required to be filed under this chapter, or obtained in the course of an examination, shall not be disclosed to third parties without the consent of the person.

C. Lawful Exceptions. It shall be unlawful for an employee or former employee of the Commission to reveal to any individual, other than an employee or legal counsel of the Commission, any information contained in the return of any taxpayer or any other information about any taxpayer acquired as a result of his or her employment by the Commission, except:

- (1) To an authorized representative of the taxpayer;
- (2) To an employee of the government of the White Mountain Apache Tribe or a member of the Tribal Council authorized by the Commission to obtain such information for use in connection with the government function of said employee or council member, provided that it shall be unlawful for the employee or council member to reveal said information except as permitted in this paragraph.
- (3) To an authorized representative of another Indian tribe or a state, provided that the receiving tribe or state has entered into a written agreement with the Commission to use the information for tax purposes only and that the receiving tribe or state has enacted a similar confidentiality rule.
- (4) To an authorized representative of a federal agency according to the terms of a reciprocal agreement for the exchange of information.
- (5) In any administrative or judicial proceeding to enforce any act or collect taxes or in any matter in which the taxpayer has put its own liability for taxes at issue;

(6) In compliance with an order of any court of competent jurisdiction in which the information sought is material to the inquiry;

(7) In recording tax liens on the property of the taxpayer or collecting taxes by levy upon the property or rights to property of a taxpayer;

(8) In statistical releases which do not identify a specific taxpayer or otherwise disclose the information therein as being applicable to any single taxpayer:

(9) To the extent of revealing whether a taxpayer has made a designation (and, if so, the name and address of that individual) or whether a person is a designee (and, if so, by whom the individual has been designated); and

(10) To the extent of revealing the amount and basis of unpaid taxes to the purchaser or an intended purchaser of the property or business of the taxpayer.

D. Contractor. For the purposes of this paragraph, an "employee" includes any person whose services the Commission has engaged, provided that such person agrees under contract to be bound by the provisions of this paragraph, and may include any contractor with the White Mountain Apache Tribe who enters in writing into a binding agreement with the Commission.

E. Fine or Penalty. Any employee or council member who violates any of the provisions of this paragraph shall be subject to a fine of \$50, or suspension for 30 days, or both.

F. Compliance. The Commission may further restrict the disclosure of information by ruling and will establish procedures for compliance with this paragraph.

#### SECTION 4.5 EXAMINATION AND AUDITS

For the purpose of an assessment or making a required return where none has been made, or determining the correctness of any return or form, or the liability of any person for taxes, or the liability in law or in equity of any transferee or fiduciary of any person for taxes, or collecting any liability, the Commission may make an inquiry and may proceed ---

A. Examination. To examine any books, records, papers, maps, documents, or other data which may be relevant and material to the inquiry.

B. Summons. To summon the person liable for the tax or required to perform the act, or any officer or employee or agent of the person, or any person having possession, custody or care of the books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Commission may deem proper, to appear before the Commission at the time and place named in the summons and to produce such books, records, papers, maps, documents or other data, and to give such

testimony, under oath, as may be relevant or material to the inquiry.

C. Testimony. To take such testimony of any such person, under oath, as may be relevant or material to the inquiry.

#### **SECTION 4.6      EXEMPTION REQUIREMENTS**

The Commission may require any person who has not designated an individual pursuant to § 5.9 to file an affirmative statement of exempt status. With respect to any assessment date or period for which a return is not filed, the Commission may require a person to file an affirmative declaration that it meets the exceptions from filing, together with a statement of the amount of any excluded gross receipts and the facts on which the claim of exclusion is based, or that it is not a taxpayer, with a statement of the facts on which the exempt status is based and any other information necessary to establish and determine taxpayer status and obligations. Upon written request and within a reasonable time allowed, the person must file the statement or declaration required. Failure to comply is subject to the penalties provided.

#### **SECTION 4.7      NOTICE DEEMED EFFECTIVE**

Notice required to be given by the Commission may be effectively given to a taxpayer by mailing the notice to the individual last designated by the taxpayer, at the address shown on the designation. Where a taxpayer has not designated an individual, notice may be effectively given by mailing the notice to any owner of an interest in the lease or any other person who is a lessee, permittee, or assignee of property on which the productive activity at issue is conducted, or to a person holding a permit or license for conduct of said activity. The foregoing is not intended to exclude the use of other methods of providing notice, including publication, so long as comporting with due process. Public notice of lien will be effective as to all property and rights to property of a taxpayer, business, or person if the description of the taxpayer, business, or person is sufficient to put a reasonable person on inquiry to ascertain the existence of a lien on the property.

#### **SECTION 4.8      OATHS AND AFFIRMATIONS**

Any agent or employee designated by the Commission for that purpose is authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under this chapter.

#### **SECTION 4.9      SERVICE AND ENFORCEMENT**

Summons will be served and enforced according to the following provisions.

A. Service of Summons. The Commission will serve summons by an attested

copy delivered by certified mail or in hand to the person to whom it is directed, or left at its last and usual place of abode or business. The certificate of service signed by the person serving the summons will be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, record, papers, maps, documents, and other data, it will be sufficient if the items are described with a reasonable certainty.

B. Enforcement of Summons. Whenever any person summoned neglects or refuses to obey the summons, or to produce books, records, papers, maps, documents, or other data or to give testimony, as required, the Commission may impose the sanctions provided by law and may further apply to the Tribal Court for such order as it deems proper and not inconsistent with the law for punishment of contempt, to enforce obedience to the requirements of the summons and to punish the person for his default or disobedience.

**CHAPTER FIVE  
FILING AND PAYMENT REQUIREMENTS**

**SECTION 5.1      GENERAL INFORMATION AUTHORITY**

The Commission, to the extent it deems practical, will inquire after and concerning all persons owning or having the care and management of any property with respect to which any tax is imposed and all persons who may be liable for any tax of the White Mountain Apache Tribe.

**SECTION 5.2      INFORMATION REQUIRED BY REQUEST**

The Commission may require of any and all persons who own interests in a lease granted by the White Mountain Apache Tribe who are engaged in business activity within the Fort Apache Indian Reservation, or are otherwise subject to its jurisdiction, such information as the Commission may deem relevant and material. Upon a written request and after an adequate opportunity to comply, those persons must provide the information required. Failure to comply with a request for information is subject to the penalties provided.

**SECTION 5.3      INFORMATION INCLUDED IN RETURNS**

Forms to be filed pursuant to this chapter will be provided by the Commission, and the information to be included in or filed with the forms will be prescribed in instructions and other rules. Any filing may be prepared on a clear copy of the official form.

A.    General.      A form will clearly identify the tax and the assessment date or period (if any) and provide for the name of the taxable property or taxpayer for which it is filed, the calculation of the base on which tax (if any) is computed, and the disclosure of methods underlying the calculation.

B.    Additional Information.      Additional information may be required, sufficient to establish the qualification for any exclusion from or deduction claimed in the base, or to disclose the detail of transactions.

C.    Supplemental Material.      Supplemental documents may be required and are permitted. For example, statements filed with any federal, state, or local authority which contain information substantially similar to that required herein may be attached to the form to clarify or support an entry, to disclose a method, to establish a qualification, to provide detail, or as otherwise appropriate. Such statements and other materials must be clearly identified, be referenced to the corresponding entry on the form, and be reconciled to the information therein.

D.    Attachments.      Any additional information, supplemental material, or other attachment filed with a form is deemed a part of the form itself.

E. Signature. Any return, form, or other document which is required to be made or filed under this chapter must be signed and verified by a written declaration made under the penalties set forth in §§ 6.3 and 6.6.

## SECTION 5.4 PLACE AND MANNER OF FILING AND PAYMENT

Taxpayer and other persons making filing and payments under this chapter must comply with the following requirements.

A. Place and Address. All filing and payments must be delivered to the Office of the Director or be mailed to: White Mountain Apache Tax Commission, P.O. Box 2500. Whiteriver, Arizona 85941.

B. Identification. Any payment must be clearly marked with the identification of the taxpayer, the return or other form, the assessment date or period, and the kind of liability for which the payment is being made.

C. The Payee. The check or other remittance must be made payable to the order of the White Mountain Apache Tax Commission.

D. Application of Payments. Any payment received by the Commission will be applied, first in satisfaction of any penalty, then interest, and lastly, the tax due from the taxpayer. The Commission will report to the taxpayer the application made the resulting status of the taxpayer's accounts and will issue a notice of assessment for any unpaid tax or interest.

## SECTION 5.5 EXTENSION OF TIME FOR FILING AND PAYMENT

A taxpayer may file a written request for a one-month extension of the time for filing a return, and for any payment due with the return, subject to the requirements of subsection B.

A. Manner and Time of Request. The request must identify the taxpayer, return, and assessment date or period and include a statement of cause, and must be filed at the place and by the time for filing the return.

B. Effect of Extension. The time for filing the return will be automatically extended one month. The time for any payment is also extended, provided that the taxpayer pays with the request an amount equal to the tax liability due for the previous period or at least ninety percent (90%) of the tax due with the extension return. The balance of the tax due, and accrued interest, must be paid on the extended date for filing the return.

C. Additional Extension. In its discretion and for good cause shown, the Commission may grant additional extensions of time of up to three months, on the basis of a similar written request filed before an extended due date. The Commission may require the

payment of an estimated amount of tax or condition the grant of an extension of time to pay upon the posting of a bond or provision of other security or the creation of a lien.

D. Property Taxes. No extension of time will be granted for any possessory interest tax installment, except as provided in § 7.3 See §§ 7.7, 7.8 and 9.5 regarding the stay of payment.

## SECTION 5.6 DUE DATES AND TIME DETERMINATIONS

The following rules will apply in the determination of dates and time.

A. Due Dates. Due dates are those stated in the chapter or specified in instructions, forms and notices of the Commission. If a due date falls on a Saturday, Sunday, or a legal holiday, then the due date will become the next working day. Holidays of the White Mountain Apache Tribe are the same as the federal holidays, and, when a holiday falls on a Saturday or Sunday, it is observed on the adjacent Friday or Monday.

B. Action by Mail. When a taxpayer elects to act by mail rather than another manner of delivery, the date of the action is determined by the postmark. For instance, mail postmarked by midnight of the date due is timely made and is deemed made as of that day. If self-metered mail is received within five days, the metered date is deemed to be the postmark.

C. Computation of Interval. In computing an interval of time and determining the day on which a period of time ends and action is due, the first day is not counted and the actual days---including Saturdays, Sundays and holidays---elapsed are counted.

## SECTION 5.7 RULE FOR LIABILITIES OVER \$100,000

If the tax due with the return or on a specified date is more than \$100,000, the payment must be received by the Office of the Director not later than the due date and the rule in § 5.6B regarding postmarks does not apply. A taxpayer may remit by wire or other direct bank transfer according to the instructions of the Commission.

## SECTION 5.8 INTEREST RATES AND APPLICATION

Interest is imposed on any unpaid tax.

A. Duration of Accrual. Interest is computed from the date the tax was first due (without regard to any extension or stay of time) to the date payment is received.

B. Annual Rate. The rate of interest will be the rate presently in use by the Internal Revenue Service, plus two percent (2%).

- (1) The present rate is ten percent (10%), effective beginning February 16, 1987.
- (2) Reserved.

C. Interest on Refunds. Interest will be remitted to a taxpayer on any overpayment of tax from the date the payment was received to the date a refund is made: the interest will be computed at the rate presently in use by the Internal Revenue Service, less two percent (2%).

## SECTION 5.9      DESIGNATION OF INDIVIDUAL

Each taxpayer must designate and provide the mailing address of a natural person for the purposes of notice, together with such other information as may be required by form and instructions.

A. More than One Tax. A taxpayer obligated to designate under more than one chapter must designate a single individual as the designee for all such chapters.

B. Joint or Common Undertakings. Participants in a joint or common undertaking, regardless of their ownership or agreements or the form of their organization, must designate one individual, and if one participant is the operating agent or charged with the management of the undertaking, the designation must be made by that participant.

C. Additional Individuals. A taxpayer may also name a few other individuals, not for the purpose of notice but for information, to receive the tax publications of the Commission. The Office of the Director will keep a reasonably current list and will be diligent in mailing to such individuals notices, regulations, rulings, instructions, and other information in a timely manner.

**CHAPTER SIX  
NONCOMPLIANCE PENALTIES**

**SECTION 6.1      PENALTIES FOR FAILURE TO FILE**

If a taxpayer fails to file a return by the time due, a penalty of ten percent (10%) of the tax due for the assessment date or period, but not less than \$100, will be assessed against the taxpayer.

A.    Additional Penalty.    An additional penalty of one percent (1%) of the tax due, but not less than \$100, will be assessed for each full month the return is overdue. The additional penalty will not, except as to the minimum amounts, exceed twenty-four percent (24%) of the tax.

B.    Extended Return.    A return filed on or before an extended date for filing is timely filed.

**SECTION 6.2      PENALTIES FOR FAILURE TO PAY**

A taxpayer failing to pay an amount of tax by the time due will be assessed a penalty of five percent (5%) of the amount of the underpayment.

A.    Additional Penalty.    An additional penalty will be assessed of one-half percent (½%) of the underpayment for each full month payment is overdue, but not to exceed thirty-six percent (36%) of the underpayment.

B.    Extended Due Date.    An amount paid on or before an extended date for payment is timely paid.

**SECTION 6.3      PENALTIES FOR ATTEMPT TO EVADE OR DEFEAT TAX**

Any owner who is under-assessed by reason of incomplete or incorrect information provided, or any taxpayer who understates tax imposed, through negligence or intentional disregard of the rules and regulations (but without the intent to defraud) will be assessed a penalty of \$250, plus twenty-five percent (25%) of the underpayment of tax.

A.    Fraud Penalty.    If any part of an under-assessment or understatement of tax is shown to be due to fraud, a taxpayer will be assessed a penalty of fifty percent (50%) of the underpayment of tax.

B.    Party of Fraud.    Any person who assists a taxpayer in the fraud will be subject to a penalty of \$500, plus twenty-five percent (25%) of the underpayment of the tax. Any liability arising under this subparagraph shall be assessed and collected as a tax imposed by the chapter.

## SECTION 6.4

### CHARGES FOR ADMINISTRATIVE COSTS

A taxpayer failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including attorney fees and other costs of collection outside the jurisdiction of the White Mountain Apache Tribe. These charges will be assessed unless the Commission for good cause shown relieves the taxpayer from the operation of this paragraph.

A. Costs. Costs will be limited to direct costs and the out-of-pocket expenses incurred in collection efforts beyond the ordinary office functions, duties, and notices for collecting taxes, and the usual legal expenses for obtaining local court judgments.

B. Cause. A mere mistake, the absence of negligence or of intentional disregard of the regulations, or the presence of substantial issues of interpretation, especially in the case of a deficiency arising upon examination of return which was timely filed, and all surrounding facts and circumstances, including the pattern of compliance of the taxpayer, may be given due weight in determining good cause.

C. Notice. Upon determining any charges for costs, the Commission will issue a notice of assessment to the taxpayer.

## SECTION 6.5

### FAILURE TO COMPLY WITH CHAPTER

Any person obligated to pay a tax, to make a designation, to file a return, to provide information, documents, access thereto or to property, to furnish a surety bond or other security, or to comply with a lawful order of the Commission, and failing to do the same in accordance with this chapter, may have its rights to engage in productive activity within the Fort Apache Indian Reservation suspended until compliance is made.

## SECTION 6.6

### INTERFERENCE WITH ADMINISTRATION

A. Unlawful Acts. It is unlawful for any person --

(1) To forcibly, or by bribe, threat or other corrupt practice, obstruct or impede the due administration of any tax, or

(2) To willfully fail to comply with a subpoena duly issued pursuant to this chapter, or

(3) To commit fraud, or knowingly to assist another in the commission of fraud, with the intent to evade or defeat the assessment or collection of any tax, interest, or costs imposed or assessed, or

(4) With knowledge and intent, to falsely verify by written declaration any return, form, or other document.

B. Indian Violator. Any Indian who violates any of the provisions of this paragraph shall be guilty of an offense and, upon conviction, shall be sentenced to a term of imprisonment of not more than 180 days, or ordered to pay a fine not to exceed \$500, or both, in accordance with the provisions of the Tribal Criminal Code.

C. Non-Member Exclusion. Any non-member of the White Mountain Apache Tribe who violates any of the provisions of this paragraph may be excluded from the lands of the White Mountain Apache Tribe subject to the jurisdiction of the White Mountain Apache Tribe in accordance with the procedures set forth in Chapter Five of the White Mountain Apache Government Code.

D. Suspension. Any person who violates any provision of this paragraph, or whose employee or agents in the course of their employment or agency violate any provision of this paragraph, may have its rights to engage in productive activity within all or some of the Fort Apache Indian Reservation suspended, either temporarily or permanently.

## SECTION 6.7 SUSPENSION AND FRAUD PROCEEDINGS

Suspensions and the money penalties for negligence and fraud will be imposed only by resolution of the Commission and upon a notice sent to the taxpayer or other person which provides a time, not less than fourteen (14) days after the date of the notice, when the person may appear before a hearing officer to show cause why suspension or penalty should not be imposed. The officer will issue findings of fact and a recommendation and submit them and the hearing record to the Commission. Enforcement or collection is stayed until the conclusion of the appeal to the Commission.

## CHAPTER SEVEN ASSESSMENT AND REFUND

### SECTION 7.1      ASSESSMENT POWERS

The Commission is empowered to determine and assert against a taxpayer liability for tax, interest, or costs in the following circumstances.

A.    Deficient Amount of Tax.    When it appears that a return filed, or a payment made, does not reflect the amount of tax due under this chapter, the Commission will issue a notice of assessment of a deficiency, interest, and penalties.

B.    Estimated Amount of Tax.    When no return has been filed, the Commission is authorized to estimate the tax due and issue a binding notice of assessment of the tax, interest, and penalties. The assessment may be redetermined only through an appeal and upon a showing that it is clearly erroneous.

C.    Failure to Provide Information.    If a taxpayer fails to provide information within its possession or control which is relevant to a determination of the value of a lease or any tax due, which is required to be provided under this chapter, the Commission is authorized to proceed to determine the value or make an estimate of the tax and issue a binding notice of assessment of the tax, interest, and penalties. The Commission will make the estimate on the basis of the best information it finds readily available. Unless for good cause shown it relieves the taxpayer from this subparagraph, the Commission's assessment is binding and may be redetermined only through an appeal and upon a showing that the estimate, on the basis of the Commission's best information when it was made, was clearly erroneous.

D.    Overpayment.    When it appears that a taxpayer has made an overpayment, the Commission will issue a notice to determine and remit a refund. A taxpayer may file a claim for refund of an overpayment.

### SECTION 7.2      EXAMINATION PROCEDURE

Upon completion of the examination of a taxpayer, the Commission will provide the taxpayer with a written statement of findings for any determination which alters a liability for tax, interest, or penalties, and will issue a notice of assessment (or refund) for any amounts due (or overpayment). If no such determination is made, the Commission may issue a letter stating that there is no change for the assessment date or period examined.

### SECTION 7.3      NOTICE REQUIREMENTS

A notice of assessment (or refund) will require the payment of the amount assessed (or remittance of the refund) by a time not less than sixty (60) days after the date of the

notice. The taxpayer must comply with (or accede to) the terms of the notice and, within the time allowed in the notice, any request a redetermination under § 7.1. Within the same time, a taxpayer may also seek an informal conference under § 7.6.

A. Occasions for Notice. A notice of assessment may arise from an initial assessment of tax, from an estimate of the tax due when a required return has not been filed, from a deficiency in the amount of tax reported or paid determined upon examination of a declaration, or from an application of interest, penalties, or charges for costs.

B. Assessments bindings. These assessments are bindings on the taxpayer according to the terms of the notice.

C. Overpayment. When it appears that a taxpayer has made an overpayment, the Commission will issue a notice to determine and remit a refund.

#### SECTION 7.4 SECURITY FOR PAYMENT

Whenever necessary to secure payment of any taxes due or reasonably expected to become due, the Commission is authorized to require the taxpayer to furnish an acceptable surety bond in an propriety amount, payable to the Commission and conditioned upon the payment of the taxes therein identified no later than the date on which the liability becomes conclusive, or to furnish other acceptable security in an appropriate amount, and to require the taxpayer to furnish additional security as it becomes necessary.

#### SECTION 7.5 PROCEDURE FOR REFUNDS

Any taxpayer which has made an overpayment may, within one year after the overpayment was made, file a written claim for refund with the Commission, except that no claim for refund need be filed if the basis therefor has already been established under an abatement or asserted in an appeal under this chapter, and provided that an issue determined in such an appeal may not be reopened by filing a claim for refund.

A. Government Action. If any overpayment arises from an action of a Tribal, federal or state agency, or any court other than in an appeal under this chapter, wherein the action changes the factual basis upon which the tax was determined and paid, the time for filing a claim for refund will be one year from the date of such action.

B. Adjustment for Another Tax. The Commission may be form or instruction provide for a refund or credit where taxes paid for one period thereafter requires adjustment on account of another tax for concurrent period thereafter requires adjustment on account of another tax for concurrent periods which is later determined or paid.

C. Amended Return. A claim may take the form of an amended return for the period for which the overpayment was made. The return must contain clear statement of the amount of the refund being claimed and the facts or other basis for determining an

overpayment.

D. Offset. For some overpayment, through mathematical error or other mistake, or a verifiable change of facts, such as under subparagraph (a), a taxpayer may offset against the tax due for a current period. Forms to support and calculate such an offset will be provided and must accompany the return, together with a statement of the mistake or change of facts which gave rise to the overpayment.

E. Appeal. The Commission will determine overpayment and claims for refunds according to its procedures. If a claim is denied in whole or part, the taxpayer may appeal pursuant to § 7.7. Appeals from the final action of the Commission on a claim for refunds may be made only to the Tribal Court of the White Mountain Apache Tribe.

F. Determination. If the Commission determines, either on a claim for refund under this paragraph or in an appeal on a claim or from an assessment, that the taxpayer has made an overpayment, and no appeal is taken, the Commission shall refund the overpayment and applicable interest to the taxpayer.

G. Order of Court. Where the action of the Commission on a claim for refund under this paragraph, or in the appeal on a claim or from an assessment, is then appealed, the Commission shall make a refund of the overpayment determined by the order in that appeal, plus the applicable interest.

H. Application to Unpaid Taxes. Provided, that if the taxpayer entitled to a refund owes unpaid taxes, the refund shall be offset and reduced by such unpaid amounts.

I. Prohibition Against any Other Manner of Refund. No refund of or credit for taxes paid shall be made or allowed to any person by any court or agency other than as provided in this paragraph.

## SECTION 7.6 INFORMAL CONFERENCE

Upon a notice of assessment (or denial of refund), a taxpayer may request an informal conference with the Office of the Director to consider the basis for an abatement or to clarify issues which may form the basis of an appeal under this chapter.

## SECTION 7.7 FORMAL CONFERENCE

The formal conference with the Office of the Director is an administrative procedure for seeking an abatement, or for the review and redetermination of an assessment (or denial of refund) preliminary to the request for an administrative hearing.

A. Conditions Precedent. A conference may proceed upon the basis of a notice of assessment and a timely request.

B. Time and Manner of Request. The request must be filed within the time allowed by the notice. It should identify the notice, declare the redetermination sought, and must include a complete statement of the facts relied on. The conferee, after an initial inquiry, may deny the request for conference and direct the taxpayer to proceed to a hearing.

C. Stay of Collection. Upon a proper request for an grant of a conference. payment on the notice will be stayed until a time not more than thirty (30) days after issuance of a decision.

D. Conduct of Conference. The conferee may confer with the taxpayer by phone or in person, or may require the submission of additional written material and will issue a written Conference Decision. If the result sought is denied in whole or in part, the decision will state the basis for the denial.

E. Request for Further Hearing. Within thirty (30) days after issuance of the decision, the taxpayer may request that the matters in dispute be submitted for a hearing and review before the Commission.

F. Finality of Decision. If no appeal is made within the time allowed, the decision is final and is not subject to any appeal before the Commission or in any court.

## **SECTION 7.8      STAY OF PAYMENT**

After the formal conference, the taxpayer may request a stay of payment on the Conference Decision; the request must be based upon an intention to request a hearing and must be filed within ten (10) days after issuance of the decision.

## CHAPTER EIGHT COLLECTION PROCEDURE

### SECTION 8.1      COLLECTION POWERS

The Commission has full power to collect any taxes assessed, including the power to attach and seize, in accordance with the provisions of this chapter, the assets of a taxpayer or any property subject to lien, and any other powers available to the White Mountain Apache Tribe for collection of debts owed it.

A.    Suit or Enforcement. The Commission may request the Tribal Attorney of the White Mountain Apache Tribe to bring suit or other enforcement proceedings in any court of competent jurisdiction.

B.    No Waiver of Counterclaim. Provided, that bringing of suit or other enforcement proceedings shall not constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe, and further provided, that the Commission shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

### SECTION 8.2      DELINQUENT LIABILITIES

All taxes, interest, and penalties assessed are a debt due and owing the White Mountain Apache Tribe from the taxpayer or other person. If an assessment is not paid when due, the Commission may, in action for itself against the delinquent party for the collection of the liability, costs, and other lawful charge thereon. In such action, the Commission will have the benefit of all the laws which provide remedies against property or rights to property, real or personal, of the person liable for the assessment.

### SECTION 8.3      DEMAND FOR COLLECTION

A notice of assessment requires the collection of the amount by the date therein; and, any amount of taxes which are reported in a return filed by a taxpayer and not paid by the due date is collectible as of that date without further notice. Absent a stay granted pursuant to this chapter, the amount of the notice or the report amount not paid is a delinquent liability and will be subject to a demand for payment issued to the delinquent taxpayer to commence collection action.

### SECTION 8.4      STATUTE OF LIMITATIONS

Assessment and collection of the taxes imposed by this chapter must proceed within the period of limitation established under the circumstances set forth below.

A.    Return filed. Any unpaid tax as may be determined must be assessed within six years after the return was filed.

B. Fraudulent filing. If a false, fraudulent return was filed with the intent to evade tax, no period of limitation will apply.

C. No return filed. Where no return has been filed, no period of limitation applies.

D. Property Assessments. No periods of limitation applies with respect to assessment of possessory interests.

E. Interest and costs. These periods of limitation will apply in a corresponding manner to assessment and collection of related interest and costs.

F. Suspension of limitations. The running of any period of limitation is suspended during any time that the Commission is barred from assessment or collection by:

(1) The duration of a prohibition by any court.

(2) The duration of any appeal to or from a determination of the Commission.

(3) Any duration agreed to between a taxpayer and the Commission.

**CHAPTER NINE  
CONDITIONS AND PROCEDURE FOR APPEAL**

**SECTION 9.1        PROHIBITION OF SUITS**

No suit to restrain the assessment and collection of the tax imposed by this chapter or any chapter of the Tax Code shall be maintained in any court by any person, whether or not such person is the one on whom such taxes were assessed.

**SECTION 9.2        ADMINISTRATIVE APPEAL**

Appeal from assessments and denials of refund must be made first to the Commission according to its procedures under § 9.3. Appeals from final actions of the Commission, including but not necessarily limited to assessments, denials of refund, and a suspension order, shall be made only to the Tribal Court of the White Mountain Apache Tribe.

**SECTION 9.3        PROCEDURE FOR HEARING**

The Commission may permit or require one or more levels of review by its employees or delegates and will provide for hearings before a hearing officer, but the decision or recommendation of the hearing officer will be bindings only to the extent adopted by the Commission as a final decision. The failure to proceed to a next level of review required under this paragraph shall constitute a waiver of any further appeal.

**SECTION 9.4        TIME AND MANNER OF APPEAL**

Within sixty (60) days after the date of a notice of assessment (or denial of refund), the tax payer may request a formal review of the assessment, a procedure involving two steps: administrative hearings; and, entry of the record, findings, and recommendations of the hearing officer from which will issue the final action of the Commission.

**SECTION 9.5        STAY OF PAYMENT OF TAXES**

Payment of taxes which are being appealed in an administrative hearing may be stayed upon the written request of the appellant. The stay may be conditioned on the posting of a bond or provision of other security, or on the creation of a lien.

**SECTION 9.6        APPEAL TO THE COURT**

Upon a final action of the Commission, the taxpayer may then appeal to the Tribal Court of the White Mountain Apache Tribe.

A.    Payment Required. No appeal may be taken or will proceed before the Court until the payment of the taxes assessed or determined by the Commission has first been made.

B. Time for Appeal. The request for appeal must be filed with the Court within thirty (30) days after issuance of the Commission's order.

## SECTION 9.7 JURISDICTION OF COURTS

The Tribal Court of the White Mountain Apache Tribe is vested with jurisdiction:

- A. Persons. Over any and all persons subject of this chapter.
- B. Subjects. To hear and determine any challenge to the validity of this chapter, either generally or as applied to any person, provided that the regulations governing appeals are complied with.
- C. Review on Appeal. Review of Commission actions in the Court of Appeals shall be on the record made in the Commission and not de novo, and shall be limited to the determination whether the action of the Commission was not supported by the evidence, or was arbitrary, capricious, an abuse of discretion, beyond its authority, or otherwise contrary to applicable Tribal or federal law.
- D. Suspensions. Except that, where an affirmative of the Commission's action would suspend a right of an appellant to engage in productive activity within the Fort Apache Indian Reservation, the appellant shall on request be entitled to a hearing de novo on any material question of fact.
- E. Actions of the Court. The Court shall be empowered to affirm, reverse, or modify a Commission action, or to remand the matter to the Commission for further action, and it may stay the effect of an order suspending a right to engage in productive activity, pending the appeal.

**CHAPTER TEN  
TAX RECEIPTS; EFFECTIVE DATES**

**SECTION 10.1      TAX RECEIPTS AND DISBURSEMENTS**

All monies received by the Commission as taxes shall be deposited immediately under appropriate procedures with the Treasurer of the White Mountain Apache Tribe for credit to the Tax Administration Fund.

A.    Payments of Refunds.      Refunds shall be disbursed from this fund, except where there was a pertinent escrow established under subsection C. and § 10.3.

B.    Transfer Remainder.    At the end of each month, the money remaining in the fund, after the payment of refunds under subsection A. of this section, shall be transferred to the general fund or to such other funds or the credit of such accounts, as may be provided by Tribal law.

C.    Maintain Escrow or Balance. Notwithstanding the foregoing, the Commission may in its discretion hold certain contested amounts in escrow under § 10.3, or direct that some balance be maintained in the fund from month-to-month in anticipation of payments which may have to be made therefrom.

**SECTION 10.2      DUTIES OF TREASURER**

The Treasurer is authorized and directed --

A.    Deposit.      To credit all tax monies received from the Commission to the Tax Administration Fund.

B.    Separate Accounts.    To keep separate accounts for the fund and for any escrow established within the fund.

C.    Accountability and Reports. To be accountable to the Commission for the accounts and their disposition, by regular and timely reports to the Office of the Director.

(1)    The reports will be confidential and subject to the disclosure rule.

(2)    The reports will be made no less often than monthly, with quarterly summaries.

(3)    The reports will show the amounts deposited and disbursed during the month and will reconcile the beginning and ending fund balances.

D.    Disbursements.      To disburse refunds as directed by the Commission,

and in accordance with procedures to be established jointly with the Office of the Director.

**SECTION 10.3      ESTABLISHMENT OF ESCROW**

The Commission by resolution may establish escrow accounts with the Treasurer of the White Mountain Apache Tribe or an acceptable fiduciary agency, and prescribe the procedures and accountability required for the custody and management of the monies placed in those accounts.

**SECTION 10.4      EFFECTIVE DATE**

The effective date of these regulations is May 1, 1988 and their provisions apply (except as otherwise provided) to all assessment dates and period beginning on or after the effective dates of the respective chapters.

**SECTION 10.5      TEMPORARY RULE**

Conflicts among the respective chapters of the regulations shall be resolved first by reference to the respective chapter and, then, in favor of this Part I.

**PART II**  
**TAXES**

**CHAPTER ELEVEN**  
**BUSINESS ACTIVITY TAX**

**SECTION 11.1      SHORT TITLE**

The tax imposed by this Chapter shall be called the Business Activity Tax.

**SECTION 11.2      TAX IMPOSED**

A tax is hereby imposed on the gross receipts of all businesses within the boundaries of the Fort Apache Indian Reservation. The tax due for the period is computed by multiplying the total gross receipts for the taxable term by the tax rate.

**SECTION 11.3      ADMINISTRATION**

The Tribal Chairman's Office is empowered to administer this tax and, to that end, shall be empowered to adopt rules and regulations, both substantive and procedural, orders implementing its decisions, rulings, and instructions such as may be necessary to the proper and efficient administration of this code, including the establishment of a Tribal Tax Commission.

**SECTION 11.4      DEFINITIONS**

Subject to additional definitions contained in the subsequent sections of this code, and unless the context otherwise requires, in this Part:

A.      **"Business"** means any person engaged in trade, commerce, manufacturing, power production, construction, or any other productive activity, whether for profit or not, wholly or in part within the boundaries of the Fort Apache Indian Reservation.

B.      **"Gross receipts"** of a business are the gross receipts of that business from the sale, either within or without the boundaries of the Fort Apache Indian Reservation, of goods or services, as those terms are defined in paragraphs 3 and 4 of this section.

C.      **"Goods"** are all personal property produced, processed, or extracted without the boundaries of the Fort Apache Indian Reservation, including any minerals, gases or other natural resources and electrical power, and personal property produced, processed or extracted from within the boundaries of the Fort Apache Indian Reservation and brought within the boundaries of the Fort Apache Indian Reservation. For sale at retail, including any minerals, gases, or other natural resources and electrical power.

D. **"Services"** are all services performed within the boundaries of the Fort Apache Indian Reservation, including the transport or transmission by whatever means of mineral or natural gas or any other natural resources and electrical power and communication signals, and any other service of whatever nature.

E. **"Sale"** ----

(1) General Rule: A sale consists of a transfer of ownership between buyer and seller for a consideration;

(2) A sale also consists of the delivery of goods or services by a business located within the boundaries of the Fort Apache Indian Reservation, for the use of benefit of any person of which the business is a part.

F. **"Gross Receipt of a Business"** means and are to be determined according to the following rules:

(1) General Rule: Except as provided in subparagraph B and C below, the gross receipts of a business is the amount of money plus the fair market value of property and services received by the business on the sale of goods and services:

(2) Sale without the boundaries of the Fort Apache Indian Reservation: for sales beyond the boundaries of the Fort Apache Indian Reservation, gross receipts are determined by the value of the goods and services at the time and place said goods and services are transported beyond the boundaries of the Fort Apache Indian Reservation;

(3) Sales among related persons: On a sale of goods and services by a business to a related person, gross receipts are the fair market value of the goods or services sold.

(4) Estimate of Fair Market Value: When practical, fair market value is to be determined on the basis of consideration paid and comparable transactions, but if such information is not available, the estimate of fair market value will be made according to regulations.

G. **"Person"** means any organization, whether it be a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, corporation, or government (other than the government of the White Mountain Apache Tribe and any wholly owned subdivision or enterprise of that government), or any part, divisions, or agency of any of the foregoing, and an individual or group of individuals.

H. **"Related Person"** means two or more persons owned or controlled, directly or indirectly, by the same person and as applied to individuals, means two or more individuals who have a legal relationship arising out of marriage, adoption, or blood, through

the third degree of kinship.

I. **"Control"** means the right or any kind of ability to direct the performance or activity of another person, direct or indirect, whether legally enforceable or not and how ever such right may be exercisable or exercised.

J. **"Taxes"** means the tax, and any interest, penalty, or costs, imposed or assessed pursuant to this chapter.

K. The Gross Receipts of a business carrying out construction activities shall be determined and shall be equal to the total value of the contract sum which is provided in the award of contract pursuant to which the construction company is performing its activities and rendering its services on the Fort Apache Indian Reservation.

L. **"Commission"** means the Chairman's Office or the Tribal Tax Commission established by the Chairman's Office for the administration of the tax imposed by this code.

#### **SECTION 11.5      TAX RATE**

Unless otherwise provided herein, the tax rate shall be equal to three percent (3%) of the gross receipts of the business.

#### **SECTION 11.6      ASSESSMENT OF TAX**

A. The tax imposed by this chapter is assessed for each quarter of the calendar year by the return filed by the business for the period.

B. Provided, that the Commission shall be authorized to assess taxes against the business and that such assessments are presumed to be correct:

(1) When it appears that the return filed by a business does not correctly reflect the tax due under this ordinance, the Commission shall assess the business for the deficiency, interest, penalties and cost.

(2) If no return is timely filed, the Commission is authorized to make an estimate of the tax due and assess the business for that tax, and all interest, penalties and costs. This assessment shall be binding on the business unless shown to be clearly erroneous. If the business fails to provide information within its possession or control which is relevant to a determination of taxes due and it is required to provide under this chapter, the Commission is authorized to make an estimate of the tax due and to assess the business for that tax, and all interest, penalties, and costs. This assessment shall be bindings on the business unless it is shown that the estimate, on the basis of the best information available to the Commission, was clearly erroneous or unless the Commission for other good cause shown relieves the business from the operation of this paragraph. Any taxes assessed shall become the

liability of the business on the date due. If the business is corporation trust or a part thereof, then the corporation or trust shall be liable for the taxes. If the business is an association, joint venture, partnership, or a part thereof, then all of the associates, participants, or partners, both general and limited, shall be jointly and severally liable for the taxes. Subject to alternation by agreement between them, any associate, participant, or partner shall have the right of contribution from any other association, participant, or partner for its proportional share of taxes paid and shall have a lien on the interest of any such other for said taxes paid.

#### **SECTION 11.7      EXEMPTIONS AND EXCLUSIONS**

A.      Nothing in this chapter shall be construed as imposing a tax on the government of the White Mountain Apache Tribe or any wholly owned subdivision or economic enterprise of the government of the White Mountain Apache Tribe.

B.      Nothing in this chapter shall be construed as imposing on the federal government a tax which is prohibited by federal law.

C.      Nothing in this chapter shall be construed as imposing a tax on the salary or wages of an individual engaged as an employee.

#### **SECTION 11.8      NONDISCRIMINATION**

No provision of this chapter shall be construed as imposing a tax which discrimination on the basis of whether a business is owned or controlled by members of the White Mountain Apache Tribe.

#### **SECTION 11.9      DESIGNATION OF INDIVIDUAL**

Each business must designate and provide the mailing address of a natural person for the purposes of notice. The Commission may by regulation, impose requirements as to the individuals who shall be designated under this section, and may require information or documentation is deems necessary for the proper and efficient administration of this tax to be provided with the designation.

#### **SECTION 11.10     FILING OF RETURN**

A.      Except as provided in subsection B of this section, each business must file a return of gross receipts and the tax due for the period by the fifteenth day of the second month after the end of each calendar quarter. Returns are due on May 15th, August 15th, November 15th and February 15th of each calendar year.

B.      The Commission may by formal regulation require that other information and relevant documents which it deems necessary for the proper and efficient administration of the tax be included with a return, and that the return be signed by specified persons.

C. No return need be filed by a business for any period in which gross receipts are less than \$1,000. This exception does not apply if a business had annual gross receipts of \$5,000 or more in any of the three years preceding the period.

D. If a business is an association, joint venture, or partnership, or a party thereof, the Commission may require that each associate, participant, or partner, whether general or limited, file a separate return in accordance with regulations.

E. No return need be filed by any person who is exempt under Section 11.7, provided that the Commission may require such person to file the information necessary to establish his exempt status.

F. The Commission may by formal regulation require information returns to be filed by any person that is deems necessary for the proper and efficient administration of the tax.

#### **SECTION 11.11      PAYMENT OF TAX**

Payment of taxes is due at the time the return is due. The Commission, however, may require payment of tax on a monthly basis in appropriate cases.

#### **SECTION 11.12      EXTENSION OF TIME FOR FILING**

A. A business may request an extension of time for filing a return. The request must be made to the Commission in writing on or before the due date for the return, an extension may be granted at the discretion of the Commission.

B. The extension of the time for filing will also constitute an extension of time for payment, unless expressly denied by the Commission. The Commission may, in its discretion, condition such an extension on the payment of an estimated tax or the posting of an estimated tax or the posting of a bond or provision of other security.

#### **SECTION 11.13      RECORD KEEPING**

A. Every business shall keep full and true records of the gross receipts for each period in accordance with regulations.

B. In the case of a business which is a part of a corporation, partnership, association, or other person, separate accounting records for that business must be maintained.

C. Records required to be kept under this section must be preserved for six years beyond the time payment of the tax is made, or if no payment is due, for six years beyond the end of the period for which the records relate.

**SECTION 11.14     INTEREST IMPOSED**

Annual rates of interest shall be established in regulations. Interest shall be imposed on any unpaid amount of tax from the date the payment was due, without regard to any extension of the time or stay of payment, to the date payment is received. Interest at a lesser rate shall be paid on an overpayment of tax and the date payment was made to the date overpayment is refunded.

**SECTION 11.15     PENALTIES FOR FAILURE TO FILE**

A.     If a business fails to file a return by the time due, a penalty of ten percent (10%) of the tax due for the period, but not less than \$100.00 shall be assessed against the business.

B.     An additional penalty of one percent (1%) of the tax due for the period, but not less than \$100.00 shall be assessed for each full month the return is overdue. Provided that the additional penalties shall not, except as to the minimum amounts, exceed twenty-four percent (24%) of the tax.

C.     A return filed on or before an extended date for filing is timely filed.

**SECTION 11.16     PENALTIES FOR FAILURE TO PAY**

A.     A business failing to pay an amount of tax by the time due shall be assessed a penalty of five percent (5%) of the amount of the underpayment.

B.     An additional penalties shall be assessed of one-half percent (.5%) of the underpayment for each full month payment is overdue, but not to exceed thirty-six percent (36%) of the underpayment.

C.     An amount paid on or before an extended date for payment is timely paid.

**SECTION 11.17     PENALTIES FOR ATTEMPT TO EVADE OR DEFEAT TAX**

A.     Any business understating the tax imposed by this chapter through the negligence or intentional disregard of the rules and regulations (but without the intent to defraud) shall be assessed a penalty of \$250.00 plus twenty-five (25%) percent of the underpayment of tax.

B.     If any part of an understatement of tax is shown to be due to fraud, a business shall be assessed the penalty of fifty percent (50%) of the underpayment of tax.

C.     Any person who assists a business in the fraudulent understatement of the tax due under this chapter shall be subject to a penalty of \$500.00, plus twenty-five percent (25%) of the underpayment of tax. Any liability arising under this subsection shall be

assessed and collected as a tax imposed by this chapter.

**SECTION 11.18      CHARGES FOR ADMINISTRATIVE COST**

A business failing to pay any tax at time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amounts, including attorney's fees and other costs of collection outside the jurisdiction of the White Mountain Apache Tribe. These charges shall be assessed unless the Commission for good cause shown relieves the business of the operation of this section.

**SECTION 11.19      FAILURE TO COMPLY WITH THIS CHAPTER**

Any business or other person obligated to pay taxes pursuant to this chapter, to designate an individual, to file a return, to provide information or documents or to allow access to equipment within its possession or control, to furnish a surety bond or other security, or to comply with the lawful orders of the Commission, and failing to do so same in accordance with the provisions of this chapter and any regulations issued pursuant thereto, may have its rights to engage in productive activity within all or some of the White Mountain Apache Reservation suspended, until compliance is made or for such short a time as the Commission may provide. The Commission is empowered to order such suspension, provided that it shall first give the person to be suspended notice and an opportunity to be heard pursuant to Section 11.33 A, and that any suspension may be appealed pursuant to Section 11.33 B.

**SECTION 11.20      INTERFERENCE WITH ADMINISTRATION**

A. It shall be unlawful for any person, forcibly, or by bribe, threat or any corrupt practice, to obstruct or impede the due administration of this tax.

B. It shall be unlawful for any person willfully to fail to comply with any subpoena duly issued pursuant to Section 11.33 B.

C. It shall be unlawful for any person to commit fraud, or knowingly to assist another in the commission of fraud, with the intent to evade or defeat the assessment of collection of any taxes imposed by this chapter.

D. It shall be unlawful for any person with knowledge and intent to falsely verify by written declaration any return or document.

E. Any Indian who violates any of the provisions of this section shall be guilty of an offense and, upon conviction, shall be sentenced to a term of imprisonment of not more than 180 days, or to pay a fine not to exceed \$500.00, or both.

F. Any non-member of the White Mountain Apache Tribe who violates any of the provisions of this section may be excluded from lands subject to the jurisdiction of the

White Mountain Apache Tribe in accordance with the procedures set forth in Chapter Five of the White Mountain Apache Government Code.

G. Any person who violates any of the provisions of this section or whose employees or agents violates any of the provisions of this section, may have its rights to engages in productive activity within all or some of the White Mountain Apache Reservation temporarily or permanently suspended. The Commission is empowered to order such a suspension, provided that it shall first give the person to be suspended notice and an opportunity to be heard under Section 11.33 A, and that any suspension may be appealed pursuant to Section 11.33 B.

#### **SECTION 11.21      COLLECTION POWERS**

A. The Commission shall have full power to collect any taxes assessed, including to power to attach and seize in accordance with the provisions of this code. The assents of a business or any property subject to lien, and any other powers available of debts owed it.

B. The Commission may request the Tribal Attorney of the White Mountain Apache Tribe to bring suit or enforcement proceedings in any court of competent jurisdiction. Provided, that the bringing of suit or enforcement proceedings shall not constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe, and further provided that the Commission shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

#### **SECTION 11.22      SECURITY FOR PAYMENT**

Whenever necessary to secure the payment of any taxes due or reasonably expected to become due, the Commission is authorized to require the business to furnish an acceptable surety bond in an appropriate amount, payable to the commission and conditioned upon the payment of the taxes therein identified no later than the day on which the liability becomes conclusive, and to furnish other acceptable security in an appropriate amount and to require the business to furnish additional security as it becomes necessary.

#### **SECTION 11.23      LIENS OR TAXES**

A. If a business fails to pay any taxes after demand by the Commission, the amount shall be a lien in favor of the White Mountain Apache Tribe of all property rights and property of those liable under Section 11.6.

B. The lien shall arise at the time the demand is made, shall attach to all property then owned and thereafter acquired, and shall continue until the amount of the lien is satisfied or released, and shall be effective against related persons without notice.

C. The lien shall not be effective as against other parties until notice is recorded in the office of the commission in a form available for inspection by the public.

D. Provided, that with respect to a return filed, a lien shall arise for any unpaid taxes at the time of filing without further demand, and further provided that, if a lien is required as a condition for granting an extension or stay of payment, such lien shall arise according to the terms of the extension or stay.

#### **SECTION 11.24      FORECLOSURE OF LIEN**

A. The commission may foreclose upon any or all items of property rights or to property subject to a lien for taxes by a levy upon the same and, where such property does not consist of money, converting the same into money by any appropriate means including the sale thereof or the operation under receivership of the business in which the property is used. Provided, that the commission may by regulation prescribe the circumstances in which property or rights to property subject to a lien may be retained to offset the amount due, rather than being converted into money.

B. The Commission, by regulation, may provide for the redemption of property levied upon, within time limits and terms specified.

C. The effect of a levy upon any person for obligations due or payable to any business or persons liable under Section 11.7, shall be continuous from the date the levy is first made until the liability out of which the levy arose is satisfied.

D. Any person in possession of or obligated with respect to property or rights to property upon which a levy has been made who, upon demand by the Commission, surrenders such property to the Commission, shall be discharged from any obligation or liability to the business or persons liable under Section 11.6, whose property or rights to property were levied upon.

E. The Commission shall carry out the provisions of this section under regulations complying with due process, and no court proceedings shall be required in order for it to do so.

F. Proceedings for the sale of property substantially in compliance with the regulations shall be effective to transfer to the purchaser all right, title, and interest therein of the business or person whose property or rights to property were levied upon. Provided that where required by federal law the sale of property shall not be final without the approval of the Secretary of the Interior.

G. The Commission may delegate and empower persons to carry out the procedures of this section, including officers of the White Mountain Apache Police Department, who shall render assistance in this regard on request by the commission.

#### **SECTION 11.25      APPLICATION OF PROCEEDS**

A. Money levied upon by the Commission or realized from property or rights to

property levied upon, shall be applied first to the expenses of the levy proceedings for the conversion of property, and then to the liability of costs, penalties, interests, and tax, in that order.

B. The balance, if any, shall be remitted to the person or persons who have claimed and proven a legal entitlement thereto, provided that the commission may set time limits or other reasonable conditions on making and improving of such claims.

#### **SECTION 11.26     RELEASE OF LIEN**

A. Payment of the entire liability of the business on account of whose liability the lien arose, shall operate to release the lien.

B. The payment of any part of the liability shall operate to reduce the amount of the lien by the amount paid.

C. Where a lien has been recorded and the commission thereafter receives all or part of the taxes giving rise to the lien, the commission will immediately cause a notation of the complete or partial release of the lien to be made in the record.

D. The commission may in its discretion, release liens on certain property without payment of all outstanding liabilities, for good cause and where the interest of the White Mountain Apache Tribe are adequately protected by other security.

#### **SECTION 11.27     INTERFERENCE WITH FORECLOSURE**

A. It shall be unlawful for any person to remove from the jurisdiction of the White Mountain Apache Tribe, any property on which there is a lien for taxes which is effective against that person pursuant to Section 11.23.

B. It shall be unlawful for any person in possession of or obligated with respect to property or rights to property which have been levied upon, to fail to surrender such property rights or to discharge such obligation upon demand by the commission therefore, except as to any part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process.

C. Any person violating provisions of this section shall be personally liable for the value of the property removed or rendered, or for the amount of the obligation not discharged, not exceeding the amount for which the levy be made. Any liability arising under this section shall be assessed and collected as a tax imposed by this chapter.

#### **SECTION 11.28     TRANSFER OF BUSINESS**

A. If a person buys substantially all of the assets of a business, that person shall withhold from the purchase price and pay to the Commission the amount of taxes due on

account of the activities prior to the purchase.

B. Any purchaser failing to withhold taxes shall be personally liable upon the value of all the property acquired. Any liability arising under this section shall be assessed and collected as a tax imposed by this chapter.

C. The purchaser shall make a written request, and within 30 days after the owners records are made available for audit, the Commission shall send a notice to the purchaser for the taxes due. Thereafter, the purchaser shall not be personally liable under this section for any taxes in excess of the amount stated in the notice or for any such taxes if no notice is given within the time required.

D. No consent to the assignment or transfer of any lease or other rights to engage in productive activity within the White Mountain Apache Reservation shall be granted by the White Mountain Apache Tribe unless the Commission first certifies that taxes arising from said activity have been paid, or that payments have been adequately secured.

#### **SECTION 11.29      MUTUAL ASSISTANCE AGREEMENTS**

The Chairman's Office is authorized to negotiate mutual assessment and collection assistance agreements with any other taxing jurisdiction. The agreements so negotiated will come into force only upon ratification by the Tribal Council of the White Mountain Apache Tribe.

#### **SECTION 11.30      PROHIBITION OF SUITS**

No suits for the purpose of restraining the assessment or collection of the taxes imposed under this chapter shall be maintained in any court by any person, whether or not such person is the person against whom such taxes were assessed.

#### **SECTION 11.31      STATUS OF LIMITATIONS**

A. Taxes imposed by this chapter shall be assessed within six (6) years after the return was filed, except as provided in subsections B and D of this section.

B. In the case of a fraudulent return filed with the intent to evade the tax, no period of limitation shall apply.

C. Any action in a court or by levy for collection of taxes imposed under this chapter must be commenced within six (6) years of the assessment, except as provided in subsection D and E of this section.

D. The running of the period of limitations provided in subsections A and C of this section is suspended during any period during which the Commission is prohibited by any court from making an assessment of commencing collection proceedings, and during any

period of appeal under section 11.33.

E. The running of the period of limitation for a collection may be suspended for any period agreed upon between the business being taxed and the Commission.

## **SECTION 11.32      PROCEDURE FOR REFUNDS**

A. Any business believing it has made an overpayment to taxes, within one (1) year after the time the alleged overpayment was made, may file a written claim for refund with the commission, provided, that it shall not be necessary to file a claim if the basis therefore has already been established under an abatement or asserted in an appeal under Section 11.34, and further provided that an issue determined pursuant to an appeal may not be reopened by the filing of a claim for refund.

B. If any overpayment arises as a result of an action of a tribal, federal or state agency, or any court other than in an appeal under Section 11.33 B, wherein the action changes the factual basis upon which taxes were determined and paid, the time for filing a claim for refund shall be one year from the date of such action.

C. The commission shall rule on claims for refunds according to procedures established in the regulations. If a claim is denied in whole or in part, the business may appeal pursuant to Section 11.33.

D. If the Commission determines, either on a claim for refund under this section or in appeal under Section 11.33 A, on a claim or from an assessment, from which action no appeal is taken, that a business has made an overpayment, the Commission shall refund the overpayment, with applicable interest, to the business.

E. Where the action of the Commission on a claim for refund under this section, or in the appeal under Section 11.33 A, on a claim or from an assessment, is then appealed, the Commission shall make a refund of the overpayment determined by the order in that appeal, plus the applicable interest.

F. Provided, that if the Business entitle to a refund owns unpaid taxes, the refund shall be offset and reduced by such unpaid amounts.

G. Where an overpayment occurred through mathematical error, or other mistake, or verifiable change of fact, and within the times allowed under sections A and B of this section, the Commission by formal regulation may provide for a credit by offset in a current period.

H. No refunds or credits for taxes paid shall be made or allowed to any person by any court or agency other than as provided in this section, except that the Commission may by form or regulation provide for a refund or credit where taxes paid for one period thereafter requires adjustment on account of another tax for a concurrent period which is later

determined and paid.

**SECTION 11.33      PROCEDURE FOR APPEAL FROM ASSESSMENTS AND ACTIONS**

A. Appeals from assessments and denials of refunds shall be made first to the Commission according to procedures established in regulations. The Commission may permit or require one or more levels of review by its employees or delegates, and may provide for hearings before hearing officers instead of or in addition to hearings before the Commission as a body, but the decision or recommendation of a hearing officer will be binding only to the extent adopted by the Commission as a final decision. The failure duly to proceed to a next required level of review under this subsection shall constitute a waiver of any further appeal pursuant to this subsection or subsection B.

B. Appeals from final actions of the commission, including but not necessarily limited to assessments, denials of refund, and suspension orders, shall be made only to the Court of Appeals of the White Mountain Apache Tribe, according to procedures established in regulations, but in no case may an appeal of an assessment be taken to the court of appeals until payment of the taxes assessed has first been made. Review of all actions taken by the Commission in the court of appeals shall be on the record made in the Commission and not do novo, and shall be limited to the determination whether the action of the Commission was not supported by the evidence, or was arbitrary, capricious, an abuse of discretion, beyond its authority, or otherwise contrary to applicable tribal or federal law; except that where affirmation of the action would suspend a right of an appellant to engage in productive activity within the White Mountain Apache reservation, the appellant shall on request be entitled to a hearing de novo on any material question of fact. The court of appeals shall be empowered to affirm, reverse, or modify a commission action, or to remand the matter to the commission for further action, and it may stay the affect of an order suspending a right to engage in productive activity, pending the appeal.

C. Procedures for staying the payment of taxes which are being appealed under this section may be established in regulations. The Commission in its discretion, may condition the ground of a stay on the posting of a bond or provision of other security, or on a creation of a lien.

D. The Tribal Court of the White Mountain Apache Tribe is vested with jurisdiction:

(1) over any and all persons subject to this code;

(2) to hear and determine challenges to the validity of this code either personally or as applied to any person, provided that the provisions of this section and regulations hereunder are complied with.

## **SECTION 11.34     ABATEMENT OF AUTHORITY**

A. In response to a written request for abatement, but before any court acquires jurisdiction in the matter, or when an assessment is found to be incorrect, the commission may abate any part of the assessment determined to have been incorrectly, erroneously or illegally made.

B. Upon a compromise of liability and according to the terms of the closing agreement formalizing the compromise, the Commission shall cause the abatement of the appropriate amount of the assessment.

C. Abatement in excess of \$1,000 shall be recorded in the office of the Commission in a form available for public inspection. The records shall be maintained for a minimum of six years (6) after the date of abatement.

## **SECTION 11.35     CLOSING AGREEMENTS**

A. If at any time after a final assessment of taxes, the Commission in good faith is in doubt of the liability of the business for the payment thereof, it may compromise the liability by entering in writing with the business a closing agreement that adequately protects the interests of the White Mountain Apache Tribe, provided that such agreement shall be subject to approval by the Tribal Attorney of the White Mountain Apache Tribe.

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

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

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

## **SECTION 11.36     CONFIDENTIALITY RULE**

A. It shall be unlawful for any employee or former employee of the Commission to reveal to any individual, other than another employee or legal counsel of the Commission, and information contained in the return of any business or any other information about any business acquired as a result of his or her employment by the Commission except;

(1) To an authorized representative of the business;

(2) To an employee of the government of the White Mountain Apache Tribe or a member of the White Mountain Apache Tribal Council authorized by the

Commission to obtain information for use in connection with the governmental function of said employee or council member, provided that it shall be unlawful for the employee or council member to reveal said information except as permitted in this section.

(3) To an authorized representative of another Indian tribe or a state, provided that the receiving tribe or state has entered into a written agreement with the Commission to use the information for tax purposes only and that the receiving tribe or state has enacted a confidentiality statute similar to this section;

(4) To an authorized representative of a federal agency, pursuant to the terms of a reciprocal agreement for the exchange of such information;

(5) In any administrative or judicial proceeding to enforce any act or collect taxes, or in any matter in which the business has put its own liability for taxes or the amount thereof at issue;

(6) In compliance with the order of any court of competent jurisdiction in which the information sought is material to the inquirer;

(7) In recording tax liens on the property of a business or collecting taxes by levy upon the property or rights or property of the business;

(8) In statistical releases not identifying the information provided as applicable to any single business;

(9) To the extent of revealing to the purchaser or intended purchaser of a business or the property thereof, the amount and basis of any unpaid taxes for which the seller is liable.

B. For purposes of this section, employees of the Commission shall include any person for whose services the Commission has contracted, provided that such person shall agree in the contract for services to abide by the provisions of this section.

C. Any employee or Council Member who violates any of the provisions of this section shall be subject to a fine of \$50.00 or suspension for 30 days, or both. The Commission may further restrict the disclosure of information and provide for compliance with the provisions of this section.

## **SECTION 11.37      EFFECTIVE NOTICE**

A. Notice required to be given by the Commission may be effectively given to a business by mailing the notice to the individual last designated by the business, at the address shown on the designation. Where a business has not designated an individual, notice may be effectively given by mailing the notice to a person who is lessee, permittee, or

assignee of property on which the productive activity at issue is conducted, or to a person holding a permit or license of the conduct of such activity. The foregoing is not intended to exclude the use of other methods of providing notice, including publication, so long as comporting with due process.

B. Public notice of a lien shall be effective as to all property and rights to property of a business, or person so long as the description of the business, or person is sufficient to put a reasonable person on inquiry to ascertain the existence of a lien on the property of said business, or person.

#### **SECTION 11.38      INVESTIGATIVE AUTHORITY**

A. For the purpose of enforcing the provisions of this chapter, the Commission is authorized to inspect property, to examine and require the production of any pertinent records, books, information, or evidence, and to require the presence of any person and require testimony under oath concerning the subject matter of any inquiry, and to make a permanent record of the proceeding.

B. As a means of accomplishing the foregoing, the Commission is hereby vested with the power to issue subpoenas and summons, pursuant to regulations comporting with due process.

#### **SECTION 11.39      OATHS AND AFFIRMATIONS**

Any agent or employee designated by the Commission for that purposes is authorized to administer such oaths or affirmations, and to certify or such papers as may be necessary under this code or regulations issued pursuant thereto.

#### **SECTION 11.40      RECEIPTS; DISBURSEMENTS**

A. There is hereby created in the tribal treasury the tax administration fund.

B. All money received by the Commission as taxes shall be deposited forthwith to the credit of said fund.

C. Payment of claims for refund shall be disbursed from this fund, except to the extent that there is a pertinent escrow established pursuant subsection E of this section.

D. At the end of each month, the money remaining in the fund, after the payment of refunds under subsection C of this section shall be transferred to the general fund or to such other funds or the credit of such accounts, as may be provided by tribal law.

E. Notwithstanding the foregoing, the Commission may in its discretion, hold certain contested amounts in escrow, or direct some balance to be maintained in the tax administration fund from month-to-month in anticipation of additional payments which may

have to be made therefrom.

**SECTION 11.41     SEVERABILITY**

If any provision of this chapter, as amended, to 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 chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

**SECTION 11.42     EFFECTIVE DATE**

A.     Upon approval by the White Mountain Apache Tribal Council, this chapter shall take effect. The tax imposed by this chapter shall be due and payable for calendar quarters beginning on that date.

B.     The amendments to this chapter shall take effect upon approval by the White Mountain Apache Tribal Council, for all calendar quarters beginning on or after the effective date; provided, that any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any quarter beginning before the effective date.

**SECTION 11.43     REPEALS**

All laws or parts of laws which are inconsistent with the provisions of this ordinance are hereby repealed, including without limitation, any law purporting to waive any right of taxation by the White Mountain Apache Tribe.

**CHAPTER TWELVE  
POSSESSORY INTEREST TAX**

**SECTION 12.1      SHORT TITLE**

The tax imposed by this chapter shall be called the "Possessory Interest Tax."

**SECTION 12.2      TAX IMPOSED**

A tax is hereby imposed on possessory interests within the Fort Apache Indian Reservation at the rate established under § 12.6. The tax assessed under this chapter is computed by multiplying the value of a possessory interest on the assessment date by the tax rate.

**SECTION 12.3      ADMINISTRATION**

The White Mountain Apache Commission is empowered to administer this tax and, to that end, shall be empowered to adopt rules and regulations both substantive and procedural, order implementing its decisions, rulings, and instructions, such as may be necessary to the proper and efficient administration of this chapter.

**SECTION 12.4      DEFINITIONS**

Subject to additional definitions (if any) contained in the subsequent sections of this chapter, and unless the context otherwise requires, in this chapter:

- A.    **"Apache"** means an enrolled member of the White Mountain Apache Tribe.
  
- B.    **"Assessment"** date means each January 1st.
  
- C.    **"Lease"** means any agreement conferring rights to use or possess tribal lands or to sever products therefrom, including, but not limited to, a lease, right-of-way, use permit, or a joint venture or operating agreement.
  
- D.    **"Owner"** means any person who owns an interest in a lease, or part thereof, as grantee, lessee, permittee, assignee, sublessee, or transferee, whether of the whole interest or less than the whole. In the case of parties to a joint venture or operating agreements, owners and their interests shall be determined under regulations.
  
- E.    **"Person"** means any organization, whether it be a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, corporation, or government (other than the government of the White Mountain Apache Tribe and any wholly owned subdivision or enterprise of that government), or any part, division, or agency of any of the foregoing, and an individual or group of individuals.

F. **"Possessory interest"** means the property rights under a lease granted by the White Mountain Apache Tribe, including the rights to the leased premises and the underlying natural resources, and any improvements placed on the leased premises.

G. **"Related persons"** means two or more persons owned or controlled, directly or indirectly, by the same person and, as applied to individuals, means two or more individuals who have a legal relationship arising out of marriage, adoption, or blood, through the third degree of kinship.

H. **"Control"** means the right or any kind of ability to direct the performance or activity of another, direct or indirect, whether legally enforceable or not, and however such right may be exercisable or exercised.

I. **"Commission"** means the White Mountain Apache Commission.

J. **"Fraud"** has the same meaning as that established in the interpretation of Section 7203 of the United States Internal Revenue Code of 1954, as amended or renumbered.

K. **"Levy"** means seizure and distraint by any means.

L. **"Regulations"** means the regulations adopted by the Commission.

M. **"Taxes"** means the tax, and any interest, penalty, or costs, imposed or assessed pursuant to this chapter.

N. **"Tribal Council"** means the Tribal Council of the White Mountain Apache Tribe.

## **SECTION 12.5      VALUATION**

A. The value of a possessory interest shall be determined as provided in this section, or by any method adopted by the Commission which accurately reflects fair market value. Provided, that the value of a possessory interest shall include the value of leasehold improvements whether considered personalty or realty.

B. **Fair market value method:** The value of a possessory interest may be determined on the basis of the selling prices of comparable leases (whether within or without the Fort Apache Indian Reservation) which are sold by willing sellers to willing buyers, neither of whom are under a compulsion to act.

C. **Present value of income method:** The value of a possessory interest may be determined by computing the capitalized value of the gross income to be received from the lease less the reasonable expenses to be incurred in producing the income. The allowable expenses shall be set forth in regulations. Such capitalization shall be done for the remaining

life of the lease. If the lease term is indefinite, for the purpose of this method, the life of the lease shall be presumed to be twenty-five (25) years.

D. The Commission may engage private appraisal firms for the valuation of possessory interests and determination of valuation factors.

## **SECTION 12.6      RATE OF TAX**

The tax rate shall be established in regulations. The rate shall not be less than one percent (1%), or more than ten percent (10%). Until another rate is established, the tax rate is three percent (3%). A change in the rate must be announced by July 1st following the assessment date for which it is effective.

## **SECTION 12.7      ASSESSMENT**

A. Possessory interest shall be assessed annually as of the assessment date. The assessments made by the Commission are presumed to be correct.

B. Taxes assessed shall be a lien against the lease and any leasehold improvements in favor of the White Mountain Apache Tribe. Such lien shall arise as of the assessment date, without notice or demand, and shall be prior and superior to all other liens and encumbrances upon the property.

C. Owners of possessory interests shall be liable for the taxes assessed.

D. If an owner is a corporation or a trust, then the corporation or trust shall be liable for the taxes. If an owner is an association, joint venture, or partnership, or a part thereof, then the associates, participants, or partners both general and limited, shall be jointly and severally liable for the taxes. Subject to alteration by agreement between them, any associate, participants, or partner shall have a right of contribution from any other associate, participant, or partner for its proportional share of taxes paid.

E. The owners of the interest in a lease shall be jointly liable for the taxes assessed with respect to said lease and shall be severally liable for such taxes in proportion to their interests in the lease on the assessment date. Subject to alternation by agreement between them, any owner shall have a right of contribution from any other owner for its proportional share of taxes paid. The Commission in its discretion, and with the consent of all such owners, may relieve one or more of them for personal liability if it determined that the taxes area adequately secured by the lease, the personal liability of the remaining owners, or any bond it may require to be posted.

F. The Commission shall have the authority to assess unassessed possessory interests as of the date on which they should have been assessed, and to redetermine incorrect or erroneous assessments.

## **SECTION 12.8      EXEMPTIONS**

A. Nothing in this chapter shall be construed as imposing a tax on the government of White Mountain Apache Tribe or on any wholly owned subdivision or enterprise of the government of the White Mountain Apache Tribe.

B. Nothing in this chapter shall be construed as imposing on the federal government a tax which is prohibited by federal law.

C. No possessory interest with a value of less than five thousand dollars (\$5,000) shall be subject to this tax. Provided, however, that all possessory interests of a person who owns interests in more than one lease, and of related persons, shall be combined to determine the eligibility of said possessory interest for this exemption.

## **SECTION 12.9      NONDISCRIMINATION**

No provision of this chapter shall be construed as imposing a tax which discriminates on the basis of whether a lease is owned or controlled by members of the White Mountain Apache Tribe.

## **SECTION 12.10     DESIGNATION OF INDIVIDUAL**

A. Each owner must designate and provide the mailing address of a natural person for the purposes of notice. The Commission may by regulation impose requirements as to the individuals who shall be designated under this section, and may require information or documentation it deems necessary for the proper and efficient administration of this tax to be provided with the designation.

B. No designation need be made by any person who is exempt under § 308, provided that the Commission may require such person to file a statement of exempt status.

## **SECTION 12.11     FILING OF DECLARATION**

A. Except as provided in subsection C of this section or as otherwise provided by the Commission, each owner must file a declaration of its interest in any lease on or before April 1st following each assessment date. The Commission may by form or regulation require the information and documents which it deems necessary for proper efficient administration of the tax and require that the declaration be signed by specified persons.

B. If any owner fails to provide information or documents within its possession or control which are relevant to a determination of the value of a possessory interest and which it is required to provide under this chapter, the Commission may proceed to determine the value and to assess the taxes. This assessment is binding on the owner unless it is shown that the valuation, on the basis of the best information available to the Commission, was clearly erroneous or unless the Commission for other good cause shown relieves the owner

from the operation of this subsection.

C. No declaration need be filed by any person exempt under § 12.8, provide that the Commission may require such person to file the information necessary to establish exempt status.

D. The Commission may be form or regulation require any person to file the information or documents deemed necessary for the proper and efficient administration of the tax.

#### **SECTION 12.12      PAYMENT OF TAX**

The tax shall be paid in two installments, one-half being by November 1st of each year and the other one-half being due by May 1st of the following year. Provided, that no payment of tax shall due less than three (3) months after the time an assessment if made and notice thereof given and that the Commission shall extent the time for payment accordingly.

#### **SECTION 12.13      EXTENSION OF TIME**

An owner may request an extension of time for filing a declaration. The request must be made to the Commission in writing by the due date for the declaration. An extension of time may be granted at the discretion of the Commission.

#### **SECTION 12.14      RECORDKEEPING**

A. The Commission may be regulation prescribe the records which shall be kept by each owner with respect to a lease or its interest therein.

B. In the case of an owner which is part of a corporation, partnership, association or other person, separate records for the owner must be maintained.

C. Records required to be kept under this section must be preserved for six (6) years beyond the time payment of tax is made, or if no payment is due, for six (6) years beyond the due date of the declaration to which the records relate.

#### **SECTION 12.15      INTEREST IMPOSED**

Annual rates of interest shall be established in regulations. Interest shall be imposed on any unpaid amount of tax from the date the payment was due, without regard to any extension of time or stay of payment, to the date payment is received. Interest at a lesser rate shall be paid on any overpayment of tax from the date the payment was made to the date the overpayment is refunded.

**SECTION 12.16      PENALTIES FOR FAILURE TO FILE**

A.      If any owner fails to file a declaration by the time due, a penalty of ten percent (10%) of the tax for the assessment date, but not less than \$100, shall be assessed against the owner.

B.      An additional penalty of one percent (1%) of the tax due for the assessment date, but not less than \$100, shall be assessed for each full month the declaration is overdue. Provided, that the additional penalty shall not, except as to the minimum amounts, exceed twenty-four percent (24%) of the tax.

C.      A declaration filed on or before an extended date for filing is timely filed.

**SECTION 12.17      PENALTIES FOR FAILURE TO PAY**

A.      An owner failing to pay an amount of tax by the time due shall be assessed a penalty of five percent (5%) of the amount of the underpayment.

B.      An additional penalty shall be assessed of one-half percent (½%) of the underpayment for each full month payment is overdue, but not to exceed thirty-six percent is timely paid.

**SECTION 12.18      PENALTIES FOR ATTEMPT TO EVADE OF DEFEAT TAX**

A.      Any owner under-assessed by reason of incomplete or incorrect information provided through negligence or intentional disregard of the rules and regulations (but without the intent to defraud) shall be assessed a penalty of \$250, plus twenty-five percent (25%) of the underpayment of tax.

B.      If any part of an under-assessment of tax is shown to be due to fraud, an owner shall be assessed a penalty of fifty percent (50%) of the underpayment of tax.

C.      Any person who assists an owner in fraud resulting in an under-assessment shall be subject to a penalty of \$500, plus twenty-five percent (25%) of the underpayment of tax. Any liability arising under this subsection shall be assessed and collected as a tax imposed by this chapter.

**SECTION 12.19      CHARGES FOR ADMINISTRATION COSTS**

An owner failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including attorney fees and other costs of collection outside the jurisdiction of the White Mountain Apache Tribe. These charges shall be assessed unless the Commission for good cause shown relieves the owner from the operation of this section.

**SECTION 12.20      FAILURE TO COMPLY WITH CHAPTER**

Any owner or other person obligated to pay taxes pursuant to this chapter, to designate an individual, to file a declaration, to provide information or documents or allow access to property within its possession or control, to furnish a surety bond or other security, to comply with a lawful order of the Commission, and failing to do the same in accordance with provisions of this chapter and the regulations, may have its rights to engage in productive activity within all or some of the Fort Apache Indian Reservations suspended, until compliance is made or for such shorter time as the Commission may provide. The Commission is empowered to order such suspension, provided that it shall first give the person to be suspended notice and an opportunity to be heard under § 12.34 A, and that any suspension may be appealed pursuant to § 12.34 B.

**SECTION 12.21      INTERFERENCE WITH ADMINISTRATION**

A. It shall be unlawful for any person, forcibly, or by bribe, threat or other corrupt practice, to obstruct or impede the due administration of this code.

B. It shall be unlawful for any person willfully to fail to comply with a subpoena duly issued pursuant to §12.39.

C. It shall be unlawful for any person to commit fraud, or knowingly to assist another in the commission of fraud, with the intent to evade or defeat the assessment of collection of taxes imposed by this chapter.

D. It shall be unlawful for any person with knowledge and intent to falsely verify by written statement any declaration or document.

E. Any Indian who violates any of the provisions of this section shall be guilty of an offense and, upon conviction, shall be sentenced to a term of imprisonment of not more than 180 days, or ordered to pay a fine not to exceed \$500, or both, in accordance with the provisions of the Criminal Code of the White Mountain Apache Tribe.

F. Any non-member of the White Mountain Apache Tribe who violates any of the provisions of this section may be excluded from all lands subject to the jurisdiction of the White Mountain Apache Tribe in accordance with the procedures set forth in Chapter Five of the White Mountain Apache Government Code.

G. Any person who violates any of the provisions of this section, or whose employees or agents violate any of the provisions of this section, may have its rights to engage in productive activity within all or some of the Fort Apache Indian Reservation temporarily or permanently suspended. The Commission is empowered to order such be suspended, provided that it shall first give the person to be suspended notice and an opportunity to be heard under §12.34 A, and that any suspension may be appealed pursuant to §12.34 B.

**SECTION 12.22      COLLECTION POWERS**

A.      The Commission shall have full power to collect any taxes assessed, including the power to attached and seize, in accordance with the provisions of this chapter, the assets of an owner or any property subject to a lien, and any other powers available to the White Mountain Apache Tribe for collection of debts owed it.

B.      The Commission may request the Tribal Attorney of the White Mountain Apache Tribe to bring suit or enforcement proceedings in any court of competent jurisdiction. Provided, that the bringing of suit or enforcement immunity of the White Mountain Apache Tribe, and, further provided, that the Commission shall not be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

**SECTION 12.23      SECURITY FOR PAYMENT**

Whenever necessary to secure the payment of taxes due or reasonably expected to become due, the Commission is authorized to require the owner to furnish an acceptable surety bond in an appropriate amount, payable to the Commission and conditioned upon the payment of the taxes therein identified no later than the date on which the liability becomes conclusive, or to furnish other acceptable security in an appropriate amount, and to require the owner to furnish additional security as it becomes necessary.

**SECTION 12.24      LIEN FOR TAXES**

A.      If an owner fails to pay any taxes after demand by the Commission, the amount shall be a lien in favor of the White Mountain Apache Tribe upon all property or rights to property of those liable under §12.7.

B.      The lien shall arise at the time the demand is made, shall attach to all property then owned and thereafter acquired, and shall continue until the amount of the lien is satisfied or released, and shall be effective against related persons without notice.

C.      The lien shall not be effective as against other parties until notice is recorded in the offices of the Commission in a form available for inspection by the public.

D.      Provided, that the lien created under §12.7B, shall arise on the assessment date without demand for payment and, further provided that, if a lien is required as a condition for granting an extension of time or stay of payment, such lien shall arise according to the terms of the extension or stay.

E.      The Commission may by regulation exempt certain property from the operation of the lien created by this section.

## **SECTION 12.25      FORECLOSURE OF LIEN**

A.      The Commission may foreclose upon any or all items of property or rights to property subject to a lien for taxes by levying upon the same and, where such property does not consist of money, converting the same into money by any appropriate means including the sale thereof or the operation under receivership of the business in which the property is used. Provided, that the Commission may by regulation prescribe the circumstances in which property or rights to property subject to a lien may be retained to offset the amount due, rather than being converted into money.

B.      The Commission may by regulation provide for the redemption of property levied upon, within the time limits and on terms specified.

C.      The effect of a levy upon any person having obligations due or payable to an owner or persons liable under §12.7, and arising with respect to property or rights to property upon which a levy has been made, shall be continuous with the liability out of which the levy arose is satisfied.

D.      Any person in possession of or obligated with respect to property or rights to property upon which a levy has been made who, upon demand by the Commission, surrenders such property or right to property (or discharges said obligation), shall be discharged from any obligation or liability to the owner or persons liable under §12.7 whose property or rights to property were levied upon.

E.      The Commission shall carry out the provisions of this section under regulations comporting with due process, and no court proceeding shall be required in order for it to do so.

F.      Proceedings for the sale of property substantially in compliance with the regulations shall be effective to transfer to the purchaser all right, title, and interest therein of the owner or person whose property or rights to property were levied upon. Provided that, where required by federal law, the sale of property shall not be final without the approval of the Secretary of the Interior.

G.      The Commission may delegate and empower persons to carry out the procedures of this section, including officers of the White Mountain Apache Police Department, who shall render assistance in this regard on request by the Commission.

## **SECTION 12.26      APPLICATION OF PROCEEDS**

A.      Money levied upon by the Commission, or realized from property or rights to property levied upon, shall be applied first to the expenses of the levy and proceedings for the conversion of property, and then to the liability for costs, penalties, interest, and tax, in that order.

B. The balance, if any, shall be remitted to any person who has claimed and proven legal entitlement thereto, provided that the Commission may set reasonable time limits or other conditions on the making and proving of such claims.

#### **SECTION 12.27      RELEASE OF LIEN**

A. Payment of the entire liability of the owner on account of whose liability the lien arose, shall operate to release the lien.

B. The payment of any part of the liability shall operate to reduce the amount of the lien by the amount paid less the amount of any liability for taxes which has accrued since the lien, the amount of which is not reflected therein.

C. Where a lien has been recorded and the Commission thereafter receives all or part of the taxes giving rise to the lien, the Commission will immediately cause a notation of the complete or partial release of the lien to be made in the record.

D. The Commission may in its discretion release liens on certain property without payment of all outstanding liabilities, for good cause and where the interests of the White Mountain Apache Tribe are adequately protected by other security.

#### **SECTION 12.28      INTERFERENCE WITH FORECLOSURE**

A. It shall be unlawful for any person to remove from the jurisdiction of the White Mountain Apache Tribe any property on which there is a lien for taxes which is effective against that person pursuant to § 12.24.

B. It shall be unlawful for any person in possession of or obligated with respect to property or rights to property which have been levied upon, to fail to surrender such property or rights or to discharge such obligation upon demand by the Commission therefor, except as to any part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process.

C. Any person violating the provisions of this section shall be personally liable for the value of the property removed or not surrendered, or for the amount of the obligation not discharged, not exceeding the amount for which the levy was made. Any liability arising under this section shall be assessed and collected as a tax imposed by this chapter.

#### **SECTION 12.29      ASSIGNMENT OR TRANSFER OF LEASE**

A. If a person buys substantially all of the assets of an owner, that person shall withhold from the purchase price and pay to the Commission the amount of taxes owed by the owner prior to the purchase.

B. Any purchaser failing to withhold taxes shall be personally liable up to the

value of all the property acquired. Any liability arising under this section shall be assessed and collected as a tax imposed by this chapter.

C. The purchaser shall make a written request and, within 30 days after the owner's records are made available for audit, the Commission shall send a notice to the purchaser for the taxes due. Thereafter, the purchaser shall not be personally liable under this section for any taxes in excess of the amount stated in the notice, or for any such taxes if no notice is given within the time required.

D. No consent to the assignment or transfer of any lease shall be granted by the White Mountain Apache Tribe unless the Commission first certifies that all taxes owed by the transfer have been paid, or that payment has been adequately secured.

### **SECTION 12.30 MUTUAL ASSISTANCE AGREEMENTS**

The Commission is authorized to negotiate mutual assessment and collection assistance agreements with any other tax jurisdiction. The agreements so negotiated will come into force only upon ratification by the Tribal Council.

### **SECTION 12.31 PROHIBITION OF SUITS**

No suits for the purpose of restraining the assessment or collection of the taxes imposed under this chapter shall be maintained in any court by any person, whether or not such person is the person against whom such taxes were assessed.

### **SECTION 12.32 STATUTE OF LIMITATIONS**

A. Any action in a court or by levy for collection of taxes imposed under this chapter must be commenced within six (6) years after a notice of assessment is given, except as provided in subsection B and C of this section.

B. The running of the period of limitations shall be suspended during any period the Commission is prohibited by any court from commencing collection proceedings and during any period of appeal under § 12.34.

C. The running of the period of limitations may be suspended for any period agreed upon between the owners of a lease and the Commission.

### **SECTION 12.33 PROCEDURE FOR REFUNDS**

A. Any owner believing it has made an overpayment of taxes may, within six (6) months of the time the alleged overpayment was made, file a written claim for refund with the Commission. Provided, that it shall not be necessary to file a claim if the basis therefor has already been established under an abatement, or asserted in an appeal under § 12.34 and, further provided, that an issue determined pursuant to an appeal may not be reopened by the

filing of a claim for refund.

B. The Commission shall rule on claims for refund according to procedures established in regulations. If a claim is denied in whole or in part, the owner may appeal pursuant to § 12.34.

C. If the Commission determines, either on a claim for refund under this section, or in an appeal under § 12.34 A on a claim or from an assessment, from which action no appeal is taken, that an owner has made an overpayment, the Commission shall refund the overpayment, with applicable interest, to the owner within 180 days.

D. Where the action of the Commission on a claim for refund under this section, or in an appeal under § 12.34 A on a claim or from an assessment, is then appealed, the Commission shall make a refund of the overpayment determined by the order in that appeal, plus the applicable interest.

E. Provided that, if the owner entitled to a refund owes unpaid taxes, the refund shall be offset and reduced by such unpaid amounts.

F. No refunds or credits for taxes paid shall be made or allowed to any person by any court or agency other than as provided in this section.

#### **SECTION 12.34     PROCEDURE FOR APPEAL FROM ASSESSMENTS AND ACTIONS**

A. Appeals from assessments and denials of refund shall be made first to the Commission according to procedures established in regulations. The Commission may permit or require one or more levels of review by its employees or delegates, and may provide for hearings before hearing officers instead of or in addition to hearings before the Commission as a body, but the decision or recommendation of a hearing officer will be binding only to the extent adopted by the commission as a final decision. The failure duly to proceed to a next required level of review under this subsection shall constitute a waiver of any further appeal pursuant to this subsection or subsection B.

B. Appeals from final actions of the Commission, including but not necessarily limited to assessments, denials of refund, and suspension orders, shall be made only to the Tribal Court of the White Mountain Apache Tribe, according to procedures established in regulations, but in no case may an appeal of an assessment be taken to the Court until payment of taxes assessed has first been made. Review of Commission actions in the Tribal Court shall be on the record made in the Commission and not de novo, and shall be limited to the determination of whether the action of the Commission was not supported by the evidence, or was arbitrary, capricious, an abuse of discretion, beyond its authority, or otherwise contrary to applicable Tribal or federal law; except that where affirmation of the action would suspend a right of an appellant to engage in productive activity within the Fort Apache Indian Reservation, the appellant shall on request be entitled to a hearing de novo on any material question of fact. The Court of Appeals shall be empowered to affirm,

reverse, or modify a Commission action, or to remand the matter to the Commission for further action, and it may stay the effect of an order suspending a right to engage in productive activity, pending an appeal.

C. Procedures for staying the payment of taxes which are being appealed under this section may be established in regulations. The Commission in its discretion may condition the grant of a stay on the posting of a bond or provision of other security or the creation of a lien.

D. The Tribal Court of the White Mountain Apache Tribe is vested with jurisdiction.

(1) Over any and all persons subject to this chapter:

(2) to hear and determine any challenge to the validity of this chapter, either generally or as applied to any person, provided that the provisions of this section and the regulations hereunder are complied with.

#### **SECTION 12.35 ABATEMENT AUTHORITY**

A. In response to a written request for abatement, but before any court acquires jurisdiction in the matter, or when an assessment is found to be incorrect, the Commission may abate any part of assessment determined to have been incorrectly, erroneously, or illegally made.

B. Upon a compromise of liability and according to the terms of the closing agreement formalizing the compromise, the Commission shall cause the abatement of the appropriate amount of the assessment.

C. Abatements in excess of \$1,000 shall be recorded in the offices of the Commission in a form available for public inspection. The record shall be maintained for a minimum of six (6) years after the date of abatement.

#### **SECTION 12.36 CLOSING AGREEMENTS**

A. If at any time the Commission in good faith is in doubt of the liability of the owner for the payment of taxes, it may compromise the liability by entering in writing with the owner a closing agreement that adequately protects the interests of the White Mountain Apache Tribe, provided that such agreements shall be subject to the approval by the Tribal Attorney of the White Mountain Apache Tribe.

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

C. As a condition for entering into a closing agreement, the Commission may

require the provisions of security for payment of any taxes due according to the terms of the agreement.

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

## **SECTION 12.37      CONFIDENTIALITY RULES**

A. It shall be unlawful for any employee or former employee of the Commission to reveal to any individual, other than another employee or legal counsel of the Commission, any information contained in the declaration of any owner or any other information about any owner acquired as a result of his or her employment by the Commission, except:

(1) To the owner or to its authorized representative;

(2) To an employee of any other Tribal department or to a member of the Tribal Council authorized by the Commission to obtain information for use in connection with the governmental function of said employee or council member, provided that it shall be unlawful for the employee or council member to reveal said information except as permitted in this section;

(3) To an authorized representative of another Indian tribe or a state, provided that the receiving tribe or state has entered into a written agreement with the Commission to use the information for tax purposes only and that the receiving tribe or state has enacted a confidentially statute similar to this section;

(4) To an authorized representative of a federal agency, pursuant to the terms of a reciprocal agreement for the exchange of such information;

(5) In compliance with the order of any court of competent jurisdiction in which the information sought is material to the inquiry;

(6) In any administrative or judicial proceeding to enforce any act or collect taxes or in any matter in which the owner has put its own liability for taxes or the amount thereof at issue;

(7) In recording tax liens on the property of an owner or collecting taxes by levy upon the property or rights to property of an owner;

(8) In statistical releases not identifying the information provided as applicable to any single owner;

(9) To the extent of revealing whether an owner has or has not made a

designation (and, if so, the name and address of that designee), or whether a person is or is not a designee (and, if so, by whom he has been designated); and

(10) To the extent of revealing to the purchaser or intended purchaser of an owner or the property thereof the amount and basis of any unpaid taxes for which the seller is liable.

B. For purposes of this section, "employee of the Commission" shall include any person for whose services the Commission has contracted, provided that such person shall agree in the contract for services to abide by the provisions of this section.

C. Any employee or council member who violates any of the provisions of this section shall be subject to a fine of \$50, or suspension of thirty (30) days, or both.

D. The Commission may further restrict the disclosure of information and provide for compliance with the provisions of this section.

#### **SECTION 12.38      EFFECTIVE NOTICE**

A. Notice required to be given by the Commission may be effectively given to an owner by mailing to the individual last designated by the owner, at the address shown on the designation. Where an owner has not designated an individual, notice is effectively given by mailing to the owner or any person who owns an interest in the lease. The foregoing is not intended to exclude the use of other methods of providing notice, including, publication, where comporting with due process.

B. Public notice of a lien shall be effective as to all property and rights to property of an owner, business, or person so long as the description of the owner, business, or person is sufficient to put a reasonable person on inquiry to ascertain the existence of a lien on the property of said owner, business, or person.

#### **SECTION 12.39      INVESTIGATIVE AUTHORITY**

A. For the purpose of enforcing the provisions of this chapter, the Commission is authorized to inspect property, to examine and require the production of any pertinent records, books, information, or evidence, and to require the presence of any person and require him to testify under oath concerning the subject matter of an inquiry, and to make a permanent record of the proceedings.

B. As a means for accomplishing the foregoing, the Commission is hereby vested with the power to issue subpoenas and summonses, pursuant to regulations comporting with due process.

**SECTION 12.40      OATHS AND AFFIRMATIONS**

Any agent or employee designated by the Commission for that purpose is authorized to administer such oaths or affirmations and to certify to such paper as may be necessary under this chapter or the regulations.

**SECTION 12.41      RESERVED**

**SECTION 12.42      RECEIPTS; DISBURSEMENTS**

- A.      There is hereby created in the Tribal treasury the Tax Administration Fund.
- B.      All money received by the Commission for taxes shall be deposited forthwith to the credit of said Fund.
- C.      Payment of claims for refund shall be disbursed from this Fund, except to the extent that there is a pertinent escrow established pursuant to subsection E of this section.
- D.      At the end of each month, the money remaining in the Fund, after the payment of refunds under subsection C of this section, shall be transferred to the general fund or to such other funds, or the credit of such accounts, as may be provided by Tribal law.
- E.      Notwithstanding the foregoing, the Commission may in its discretion hold certain contested amounts in escrow, or direct some balance to be maintained in the Tax Administration Fund from month-to-month in anticipation of additional payments which may have to be made therefrom.

**SECTION 12.43      SEVERABILITY**

If any provision of this chapter, 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 chapter which can be given effect without the invalid provision, and to this end the provisions of this chapter are severable.

**SECTION 12.44      EFFECTIVE DATE**

After approval by the Tribal Council, this chapter shall become effective May 1, 1988.

**SECTION 12.45      REPEALS**

All laws or parts of laws (or attachments thereto) which are inconsistent with the provision of this chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the White Mountain Apache Tribe.

**CHAPTER THIRTEEN  
MOTOR VEHICLE FUEL EXCISE TAX**

[HISTORICAL NOTE: Chapter Thirteen has been revised by Ordinance No. 215, enacted April 8, 1998]

**SECTION 13.1      PREAMBLE**

The White Mountain Apache Tribe, through its inherent sovereign authority, and power vested in the Tribal Council by the Tribe's Constitution, Article IV, Section 1 (o), maintains and collects a tax upon gasoline and diesel fuel acquired within the Fort Apache Indian Reservation. To assure all purchase within the Reservation of such fuels are taxed at a uniform rate, the Tribe exempts from tax all fuels sales which are lawfully subject to the State of Arizona fuels taxes. Further, for the purpose of coordination, and lawful and efficient collection of both the Tribal and State of Arizona tax, the Tribe has adopted and incorporated selected terms and provisions of the State of Arizona fuels taxes into Tribal law. The interpretation of such provisions shall be made consistent with Tribal law and Tribal governmental structure.

**SECTION 13.2      SEVERABILITY**

If any provision of this Chapter, or application thereof, is held invalid, the remainder of this Chapter, or other applications of such provision, shall not be affected.

**SECTION 13.3      DEFINITIONS**

In this Chapter, unless the context requires another meaning:

- A.      **"Bulk fuel facility"** means a facility used to dispense fuel into the motor vehicle fuel tank, but which does not dispense or sell fuel to the general public.
- B.      **"Exempt Vehicle"** means any vehicle as defined by Arizona Revised Statutes, § 28-5432, and as amended.
- C.      **"Light Class Vehicle"** means any vehicle as defined by Arizona Revised Statutes, § 28-5701, and as amended, and includes any motor vehicle that uses use fuel, but excludes a road tractor, a truck tractor, a truck having a declared gross vehicle weight of more than twenty-six thousand pounds or having more than two axles or a passenger carrying motor vehicle designed to seat more than twenty occupants.
- D.      **"Liquid Use Fuel" or "Use Fuel"** means diesel fuel, and any fuel as otherwise defined by Arizona Revised Statutes, § 28-5701, and as amended.
- E.      **"Motor Vehicle Fuel"** means gasoline fuel, and any fuel as otherwise defined by Arizona Revised Statutes, § 28-101, and as amended.

F. **“Motor vehicle fuel tank”** means any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle, exclusive of a cargo tank.

G. **“Reservation”** means the Fort Apache Indian Reservation of the White Mountain Apache Tribe.

H. **“Vendor”** means any person, entity or organization which, within the Reservation, sells fuel or dispenses fuel into a motor vehicle fuel tank.

#### **SECTION. 13.4      TAX IMPOSED**

A tax is hereby imposed on the acquisition of Liquid Use Fuel or Motor Vehicle Fuel within the Fort Apache Indian Reservation. For the purposes of this Section, “acquisition” means to dispense such fuels into a motor vehicle fuel tank. Nothing in this Chapter is intended to preclude the Tribe from entering into a fuel tax collection and/or revenue transfer agreement with the State of Arizona in lieu of the provisions set forth in this Chapter. Any revenues received under such an agreement with the State of Arizona shall be deemed as a credit towards any tax obligation imposed under this Chapter.

#### **SECTION 13.5      TAX RATE**

A. **Liquid Use Fuel:** The tax rate imposed upon the acquisition of Liquid Use Fuel shall be the rate established in Arizona Revised Statutes, § 28-5708, and as amended.

B. **Motor Vehicle Fuel:** The tax rate imposed upon the acquisition of Motor Vehicle Fuel shall be the rate established in Arizona Revised Statutes, § 28-5606, and as amended.

#### **SECTION 13.6      PAYMENT OF TAX**

The tax imposed under this Chapter is conclusively presumed to be imposed upon the consumer who dispenses such fuels into a motor vehicle fuel tank; however, the tax shall be collected from the vendor or the bulk fuel facility operator who shall transmit the proceeds to the Office of the Tribal Treasurer within five business days following the calendar month in which the fuel is delivered to a location within the Reservation. In lieu of the provisions of this Section, the Tribe may enter into an agreement with the State of Arizona for the recording and collection of all taxes previously collected and remitted to the State of Arizona by an off-Reservation fuel supplier. such agreement shall not be deemed to preclude the application and refund from the State of Arizona for any tax proceeds not addressed in the agreement.

#### **SECTION 13.7      EXEMPTION FROM TAX**

Any fuel in transit for delivery to a location outside the Reservation and which is not dispensed into a motor vehicle fuel tank within the Reservation shall be exempt from the tax imposed under this Chapter. In addition, any acquisition of fuel which is lawfully subject to the State of Arizona Fuels taxes shall be exempt from the tax imposed by this Chapter.

**SECTION 13.8      ADMINISTRATION**

A.      The office of the Tribal Treasurer is empowered to administer the tax imposed under this Chapter, and to that end, is empowered to adopt rules and regulations, both substantive and procedural, and order implementing any decisions, rulings, and instructions as may be needed for the proper administration of this Chapter, including steps necessary for the coordination of the provisions of this Chapter with the State of Arizona fuels taxes.

B.      All vendors and operators of bulk fuel facilities shall maintain all records as set forth and for the time period established under Arizona Revised Statutes, § 28-5619(B), for deliveries of Motor Vehicle Fuel, and as set forth and for the time period established under Arizona Revised Statutes, § 28-5731, for deliveries of Liquid Use Fuel. All such records shall be available for inspection by the Office of the Tribal Treasurer.

**FUEL MANIFEST  
 WHITE MOUNTAIN APACHE TRIBE  
 Office of Tribal Treasurer  
 P.O. Box 700  
 Whiteriver, Arizona 85941**

Date: \_\_\_\_\_

PRODUCT	NET GALLONS
GAS-UNL. REGULAR	
GAS-UNL. MIDGRADE	
GAS-UNL. PREMIUM	
AVIATION	
OTHER	

Place of Purchase: \_\_\_\_\_

Owner of Fuel: \_\_\_\_\_

**CARRIER**

Name of Carrier: \_\_\_\_\_

Signature of Carrier: \_\_\_\_\_

Motor Vehicle Plate Number (Truck): \_\_\_\_\_

Motor Vehicle Plate Number (Trailer): \_\_\_\_\_

Bill of Lading Number: \_\_\_\_\_

By my signature affixed hereto, I certify that all information contained on this manifest is true and correct to best of my knowledge.

\_\_\_\_\_  
 (Signature of Carrier)

POINT OF ORIGIN: \_\_\_\_\_

DISTRIBUTOR: \_\_\_\_\_

Address: \_\_\_\_\_

DISTRIBUTOR NUMBER: \_\_\_\_\_

Distributor Invoice Number: \_\_\_\_\_

DESTINATION: \_\_\_\_\_

Address: \_\_\_\_\_

Net Gallons Received: \_\_\_\_\_ Date: \_\_\_\_\_

Received By: \_\_\_\_\_  
 (Print Name)

\_\_\_\_\_  
 (Signature of Name)