

**TITLE 38
REVENUE AND TAXATION**

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**TITLE 38
REVENUE AND TAXATION**

CHAPTER I - CIGARETTE REVENUE

38.01 GENERAL PROVISIONS

38.01.01 Title

This Chapter shall be known as the Nisqually Cigarette Revenue Code.

HISTORICAL AND STATUTORY NOTES

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
2. This Section renamed "General Provisions" from "Tobacco Control" in 2003 formatting amendments to more accurately reflect content of this section.
3. "Code" changed to "Subchapter" throughout this Title in order to maintain consistency with 2003 Tribal Code formatting amendments.
4. "Tobacco" changed to "Cigarette" and "tobacco products" changed to "cigarettes" throughout this Title as amended by Resolution 38-2004.
5. "Subchapter" changed to "chapter" throughout this Title during 2009 reformatting.

38.01.02 Intent

The intent of this Chapter shall be to levy a tax on the sale of cigarettes on the Nisqually Reservation and at any other locations where cigarettes are sold by the Tribe in order to provide revenues for the Nisqually Community Council to use for the general welfare, social, cultural and economic advancement of the Nisqually Indian Community.

HISTORICAL AND STATUTORY NOTES

This section amended in 1978 and again in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.

38.01.03 Equal Application of Chapter

The provisions of this Chapter shall apply to all persons, Indian or non-Indian, and no person shall be denied the equal protection of the terms of this Chapter.

HISTORICAL AND STATUTORY NOTES

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
2. This subsection moved from end of this Title to this location as part of 2003 formatting amendments.

38.01.04 Definitions

The following definitions apply throughout this Chapter unless otherwise specified or the context clearly indicates otherwise:

- (a) “Auditor” means an independent third party auditor selected pursuant to 38.04.02 of this chapter.
- (b) “Carton” or “carton of cigarettes” means a carton of two hundred (200) cigarettes.
- (c) “Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- (d) “Compact” means the compact entered into by the Nisqually Indian Tribe and the state of Washington dated June 24, 2004.
- (e) “Court” means the Nisqually Indian Tribal Court, and includes the Nisqually Indian Tribe Court of Appeals.
- (f) “Department” means the state of Washington Department of Revenue.
- (g) “Essential government services” means services such as Tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.
- (h) “General fund” means the Nisqually Indian Tribe general fund.
- (i) “Indian country”, consistent with the meaning given in 18 U.S.C. 1151 means:
 - (i) All land within the limits of the Nisqually Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation; and
 - (ii) All Indian allotments or other lands held in trust for a Nisqually Indian Tribal member or the Tribe, the Indian titles to which have not been extinguished, including rights of way running through the same.
- (j) “Local retail sales tax” means the combined Washington local retail sales taxes applicable in the area.

- (k) “Non-Indian” means an individual who is neither a Tribal member nor a nonmember Indian.
- (l) “Nonmember Indian” means an enrolled member of a federally recognized Indian Tribe other than the Nisqually Indian Tribe.
- (m) “Person” means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- (n) “Retail selling price” means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.
- (o) “Self-certified tribal wholesaler” means a wholesaler who is a federally recognized Indian Tribe or a member of such a Tribe, who is not required to be licensed under any state law, and who has by letter certified to the Department that it will abide by the terms of the Compact and who has signed a contract with the Tribe requiring it to abide by the terms of the Compact.
- (p) “Self-certified wholesaler” means an out-of-state wholesaler who is not a self-certified tribal wholesaler and who has by letter certified to the Department that it will abide by the terms of the Compact and who has signed a contract with the Tribe requiring it to abide by the terms of the Contract.
- (q) “Nisqually Indian Reservation” or “reservation” means the area recognized as the Nisqually Indian Reservation by the United States Department of the Interior.
- (r) “State” means the state of Washington.
- (s) “Tobacco products” means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. “Tobacco product” does not include cigarettes.
- (t) “Tribal cigarette tax” means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold and on the purchase of cigarettes by retail buyers.
- (u) “Tribal Council” means the Nisqually Tribal Council,
- (v) “Tribal member” means an enrolled member of the Nisqually Indian Tribe.

- (w) “Tribal retailer” means a cigarette retailer wholly owned by the Nisqually Indian Tribe and located in Indian country.
- (x) “Tribal tax stamp” means the stamp or stamps that indicate the Nisqually Indian Tribal cigarette tax imposed under the Contract is paid or that identify those cigarettes with respect to which no tax or another Tribal tax is imposed.
- (y) “Tribe” or “Tribal” means or refers to the Nisqually Indian Tribe.
- (z) “Wholesaler” means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

HISTORICAL AND STATUTORY NOTES

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
2. This section amended by Resolution 38-2004.

38.02 TAXATION

38.02.01 Cigarette Tax - Compact with Washington State.

On June 24, 2004, the Tribe entered into a compact with the State of Washington regarding the sale and taxation of cigarettes in Indian Country (the “Compact”). In accordance with the terms of the Compact and during its term:

- (a) The Tribe shall not engage in mail order type sales, such as internet, catalog, and telephone sales, to Washington residents outside of Indian country, unless and until the State and the Tribe have entered into a memorandum of agreement in regard to the taxability of such sales.
- (b) “Tribal retailer” refers to the Rez Mart and the Red Wind Casino.
 - (i) The Tribe will notify the Department thirty days prior to the start up of cigarette sales by any other Tribal retailer.
 - (ii) The Tribe will provide information regarding the status of land upon which any Tribal retailer is located at least 30 days prior to the startup of any new cigarette sales by such retailer.
- (c) Tribal retailers may purchase cigarettes for sale in Indian country only from:
 - (i) Wholesalers or manufacturers licensed to do business in the state of Washington;
 - (ii) Self-certified wholesalers who meet the requirements of Part VI section 2 of the Compact;

- (iii) Self-certified tribal wholesalers who meet the requirements of Part VI section 3 of the Compact; and
 - (iv) The Tribe or its enterprises as a Tribal manufacturer.
- (d) All cigarettes sold by the Tribal retailer shall bear a Tribal tax stamp, including cigarettes subject to the Tribal cigarette tax, the Tribal member cigarette tax, or exempt from either of these taxes. The stamps shall be purchased and affixed in accordance with the terms of the Contract.
- (e) The Nisqually Indian Tribe, or its designee, shall notify the state Department of Revenue 72 hours in advance of all shipments of cigarettes by the self-certified wholesaler or self-certified tribal wholesaler to the Tribe or Tribal retailers. Such notice shall include who is making the shipment (meaning who is the wholesaler), detail regarding both quantity and brand, and the invoice order number.
- (f) No person shall sell or give, or permit to be sold or given, cigarettes to any person under the age of 18. If a violation of this subsection 38.02.01(f) is reported to the Tribe:
- (i) The Tribe shall investigate the allegation; and
 - (ii) When there is probable cause to believe a violation has occurred, cite the individual who is alleged to have made a sale or gift in violation of this subsection 38.02.01(f) for such violation and apply the penalties provided in section 38.04.01.
 - (iii) It shall be no defense to a citation for a violation of this subsection 38.02.01(f) that the purchaser acted, or was believed by the defendant to act, as agent or representative of another.
 - (iv) It shall be a defense to a citation for a violation of this subsection 38.02.01(f) that the person making a sale reasonably relied on officially issued identification that shows the purchaser's age and bears his or her signature and photograph.

HISTORICAL AND STATUTORY NOTES

1. This section created by Resolution 38-2004.

38.02.02 Cigarette Tax - Levy.

- (a) In accordance with Part III of the Compact, the Tribe shall impose taxes, pursuant to the terms of this section, on all sales by Tribal retailers of cigarettes to non-Indian and nonmember Indian purchasers within Indian country.
- (b) The Tribal tax rate shall be as follows:
 - (i) For the first 36 months ("phase-in period"), the tax rate shall equal no less than the sum of an amount equal to 80 percent of the State cigarette tax, which is expressed in cents per cigarette, plus an amount equal to 80

percent of the state and local retail sales taxes. This phase-in period may be reduced in accordance with subsection 38.02.02(c).

- (ii) No later than 36 months after the initial imposition of tax under this section 38.02.02, and subject to the phase-in period reduction under subsection 38.02.02(c), the Tribal tax rate shall be no less than the sum of an amount equal to 100 percent of the state cigarette tax, which is expressed in cents per cigarette, plus an amount equal to 100 percent of the state and local retail sales taxes.
- (c) If during any quarter the number of cartons of cigarettes, excluding those manufactured by the Nisqually Indian Tribe or its enterprises, that are sold at retail exceeds by at least 10 percent the quarterly average sales during the period beginning on September 1, 2003 and ending February 28, 2004, the 36-month phase-in period shall be reduced by three months. These reductions will be cumulative. The quarterly average sales baseline shall be determined by the Auditor. For the purposes of this provision:
- (i) “Quarter” means a three-month period, each quarter immediately succeeding the next. The first quarter begins the first day of the first month the Tribal cigarette tax is imposed, if the imposition of the tax is on or before the 15th of the month, or begins the first day of the second month the Tribal cigarette tax is imposed, if the imposition of the tax is after the 15th of the month; and
 - (ii) The “quarterly average sales” means the sum of the retail sales made during the two quarters divided by two.
- (d) During the term of the Compact, upon any future increase in the state cigarette tax, state retail sales tax, or local retail sales tax, the Tribal tax on cigarettes shall increase by no less than 100 percent of the increase in the combined state and local tax rates; provided, however, that during the phase-in period the Tribal tax rate shall be set that it is at least equal to 80 percent of the then-current combined state cigarette tax and state and local sales tax.
- (e) During the term of the Compact, upon any future decrease in the state cigarette tax, state retail sales tax, or local retail sales tax, the Tribal tax on cigarettes may decrease to a minimum of no less than 100 percent of the combined state and local tax rates; provided, however, that during the phase-in period the Tribal tax rate shall be set that it is at least equal to 80 percent of the then-current combined state cigarette tax and state and local sales tax.
- (f) The following sales shall not be subject to a general Tribal sales tax levy under other provision of Tribal law:
- (i) All cigarettes manufactured by the Nisqually Indian Tribe or its enterprises in Indian Country;
 - (ii) All other cigarettes whenever a Tribal cigarette tax or Tribal member cigarette tax is imposed on those cigarettes during the term of a compact with the state of

Washington.

HISTORICAL AND STATUTORY NOTES

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
2. This section "Taxation" created as part of 2003 formatting amendments to ensure consistency with entire Code and more accurately reflect topical subdivisions of this Title. Subsections renumbered but not changed.
3. This section amended by Resolution 38-2004.

38.02.03 Sales of Cigarettes

- (a) In order to insure the collection of the tax, it is deemed desirable to control the tobacco outlets on the Nisqually Reservation.
- (b) The only purchasers and sellers of cigarettes within the boundaries of the Nisqually Reservation shall be the Rez Mart and the Red Wind Casino.

HISTORICAL AND STATUTORY NOTES

1. This section amended by Resolution 38-2004.

38.02.04 Cigarette Tax - Exemptions from - Other Taxes.

The following shall not be subject to the cigarette tax levy:

- (a) Sales of tobacco products;
- (b) Sales of cigarettes to enrolled members of the Nisqually Indian Tribe. However, such sales are subject to a Tribal member cigarette tax, which shall be equal to the tax levied under §38.02.02 on sales to non-Indians and nonmember Indians, except that enrolled members of the Nisqually Tribe shall receive a discount of \$3.50 per carton of cigarettes. The tax revenue from sales to enrolled members of the Nisqually Indian Tribe shall be exempt from the prohibition on subsidization in §38.02.02.
- (c) Sales of cigarettes manufactured by the Nisqually Indian Tribe or its enterprises within Indian country.
- (d) Mail order type sales of cigarettes, such as internet, catalog, and telephone sales, to purchasers outside of Indian country and outside of Washington state.

HISTORICAL AND STATUTORY NOTES

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
2. This section amended by Resolution 38-2004.

38.02.05 Collection - Reporting of

- (a) The Treasurer shall prepare a tax reporting form which shall be used by the seller. The tax reporting form shall include the amount of sales of cigarettes, taxes collected, and such other data as may be required by the Treasurer. The Treasurer may require other business records to verify that the correct amount of taxes were collected and paid.
- (b) The tax reporting form, the supporting records and the tax payment shall be delivered to the Nisqually Tribal Treasurer within thirty (30) days after the end of the calendar quarter.

A penalty of one (1) percent of the amount of taxes incurred in the previous calendar quarter is hereby imposed and shall be collected from the seller(s) for every thirty (30) days of non-compliance with the provisions of this ordinance.

HISTORICAL AND STATUTORY NOTES

- 1. This section amended by Resolution 38-2004.

38.02.06 Cigarette Tax - Collection and Payment of.

- (a) Every person engaged in retail sales of cigarettes in Indian country who is liable for collecting the Tribal cigarette tax levy or Tribal member cigarette tax levy, shall maintain accurate written records of the purchase, stamping, and retail sales of cigarettes, and shall make such records available for inspection by the Tribal finance officer and/or Auditor retained by the Tribe. Records shall be maintained for no less than three years after the audit is accepted by the appropriate federal oversight agency.
- (b) All applicable taxes shall be paid prior to the sale, distribution, or transfer of possession of any cigarettes. During the term of the Compact, the terms of the Compact regarding the purchase, stamping, transportation and sale of cigarettes shall apply.
- (c) Whenever cigarette taxes are paid by any person other than the consumer, user or possessor, that payment shall be considered a pre-collection of such taxes due. When the tax is prepaid by another, this amount is part of the selling price of the cigarette to the retail purchaser.

HISTORICAL AND STATUTORY NOTES

- 1. This section amended by Resolution 38-2004.

38.03 TOBACCO TAX FUND

38.03.01 Tobacco Tax Fund Creation

- (a) The Treasurer of the Nisqually Indian Community shall establish a fund to be called the Tobacco Tax Fund which shall be separately identifiable from all other tribal funds and revenues.
- (b) Tobacco excise tax revenues shall be deposited in this fund.

HISTORICAL AND STATUTORY NOTES

- 1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976.
- 2. This section "Tobacco Tax Fund" created as part of 2003 formatting amendments to ensure consistency with entire Code and more accurately reflect topical subdivisions of this Title. Subsection 38.03.01 renamed from "Tobacco Tax Fund" to "Tobacco Tax Fund Creation." Other subsections renumbered but not changed.

38.03.02 Uses of the Tobacco Tax Fund

- (a) Revenues in the amount of fifty percent (50%) of the Tobacco Tax Fund shall be used for expenditures clearly related to any of the following purposes:
 - (i) Education;
 - (ii) Economic development;
 - (iii) Senior Citizens Aid and Supportive Systems 50%;
 - (iv) Recreation;
 - (v) Community Center; and
 - (vi) Funeral Fund.
- (b) Tribal cigarette tax revenue shall be used only for essential government services, and may not be used to subsidize Tribal cigarette and food retailers. For the purposes of this section, "subsidize" means that proceeds from the Tribal cigarette tax pursuant to the Contract cannot be expended on the enterprise activities of the Tribal retail cigarette business. In addition, where the cigarette business is co-located with a retail food business, the proceeds cannot be expended to support that business.
 - (i) "Enterprise activities" include paying wages, benefits, bonuses or expenses, related to the maintenance and operation of the retail facility or typically considered to be part of a business' operating expenses and overhead.
 - (ii) "Non-enterprise activities" include, but are not limited to: government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering deductions and exemptions similar to those

available to retailers, wholesalers and others under state law; Tribal administration activities such as tax functions, contracting for health benefits, economic development, natural resources, and the provisions of job services; and distribution of moneys related to trust funds, education, and general assistance.

- (c) Tribal member cigarette tax revenue is not subject to the requirements of this section 38.03.01.

HISTORICAL AND STATUTORY NOTES

1. This section amended in 1978 and again in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1 976.
2. This section amended by Resolution 38-2004.

38.04 PENALTIES

38.04.01 Violation of Ordinance

Any persons violating the provisions of this Chapter shall be subject to a fine not to exceed two hundred dollars (\$200.00) or a jail sentence not to exceed thirty (30) days or both.

HISTORICAL AND STATUTORY NOTES

1. This section amended in 1991. Originally created by Resolution 37-1976 and Ordinance 4-1976. and
2. This section “Penalties” created as part of 2003 formatting amendments to ensure consistency with entire Code more accurately reflect topical subdivisions of this Title. Subsection 38.03.01 renamed from “Tobacco Tax Fund” to “Tobacco Tax Fund Creation.” Other subsections renumbered but not changed.

38.05 MISCELLANEOUS PROVISIONS

38.05.01 Cigarette Tax - Audit

The Tribe shall retain a third-party independent auditor for the purposes of verifying compliance with the Contract. The Auditor shall perform all work required under Part VIII of the Contract.

HISTORICAL AND STATUTORY NOTES

1. This section created by Resolution 38-2004.

38.05.02 Cigarette Tax - Prior Resolutions

Prior Tribal Council resolutions dealing with the levy of Tribal cigarette taxes are superseded by this chapter.

HISTORICAL AND STATUTORY NOTES

1. This section created by Resolution 38-2004.

38.05.03 Cigarette Sales - Permitted.

Tribal retailers identified in section 38.02.03 are the only retail businesses authorized to sell cigarettes within Indian country.

HISTORICAL AND STATUTORY NOTES

1. This section created by Resolution 38-2004.

38.05.04 Short Title.

This act shall be known and cited as the Nisqually Indian Tribe Cigarette Revenue.

HISTORICAL AND STATUTORY NOTES

1. This section created by Resolution 38-2004.

38.05.05 Severability.

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected.

HISTORICAL AND STATUTORY NOTES

1. This section created by Resolution 38-2004.

**TITLE 38
REVENUE AND TAXATION**

CHAPTER II - NISQUALLY FUEL SALES AND TAX ORDINANCE

38.10 GENERAL PROVISIONS

38.10.01 Title

This Ordinance shall be known as the Nisqually Fuel Sales and Tax Ordinance.

38.10.02 Authority

This Ordinance is enacted by the Nisqually Tribal Council, which has the authority to enact laws and ordinances, to impose taxes on all persons and property within the Tribe's jurisdiction, to negotiate and contract with agencies and officers of federal, state, local and tribal governments and to establish business enterprises that promote the economic well being of the Nisqually Tribe and the Nisqually People.

38.10.03 Findings

The Nisqually Tribal Council finds that regulation of the sale of motor vehicle and special fuels is essential to the health and welfare of the Nisqually Indian Tribe and its members. The Tribal Council further finds that tax revenues are essential to the Tribe's ability to provide goods and services, and to finance government operations and economic development for the safety, health and welfare of the Nisqually Indian Tribe, its members and members of the community. The Nisqually Tribal Council finds that there are substantial unmet needs in funding for road construction and maintenance, transportation services, public safety, infrastructure, and governmental programs that serve Tribal members, employees, customers and other community members.

38.10.04 Purpose

In the public interest and for the health and welfare of the Nisqually Indian Tribe, its members and community members, the Nisqually Tribal Council, in exercise of its authority under the Tribal Constitution, declares its purpose by the provisions of this chapter to regulate the sale of motor vehicle fuel and to impose, collect and administer taxes on the retail sale of motor vehicle fuel.

38.10.05 Scope and Jurisdiction

- (a) This Ordinance shall apply to the full extent of the sovereign jurisdiction of the Nisqually Indian Tribe.
- (b) Compliance with this Ordinance is hereby made a condition of the use of any land or premises under the sovereign jurisdiction of the Nisqually Indian Tribe.

- (c) Any person who resides, conducts business, engages in a business transaction, receives benefits from the Tribal government, including police, fire or emergency services, acts under Tribal authority, or enters the lands under the jurisdiction of the Nisqually Indian Tribe, shall be deemed to have consented to the following:
 - (i) to be bound by the terms of this Ordinance; and
 - (ii) to the exercise of civil jurisdiction by the Nisqually Tribal Court over said person in legal actions arising pursuant to this Ordinance; and
 - (iii) to detention, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to this Ordinance.

38.10.06 Sovereign Immunity Preserved

Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity, rights, powers or privileges of the Nisqually Indian Tribe.

38.10.07 Definitions

- (a) “Court” means the Nisqually Tribal Court.
- (b) “Essential Governmental Services” means services that the Nisqually Indian Tribe provides to its members, community members and visitors in order to fulfill its governmental responsibilities.
- (c) “Indian Country,” consistent with the meaning given in 18 U.S.C. §1151, means:
 - (i) All land within the limits of the Nisqually Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; and
 - (ii) All Indian allotments or other lands held in trust for a Nisqually Tribal Member or the Tribe, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- (d) “Motor Vehicle Fuel” means and includes all fuels normally sold for use in a motor vehicle or motorboat, including gasoline and diesel products.
- (e) “Non-Indian” means an individual who is neither a Tribal Member nor a nonmember Indian.
- (f) “Nonmember Indian” means an enrolled member of a federally recognized Indian Tribe other than the Nisqually Indian Tribe.

- (g) “Person” means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.
- (h) “Nisqually Indian Reservation” or “Reservation” means the area recognized as the Nisqually Indian Reservation by the United States Department of the Interior.
- (i) “State” means the State of Washington.
- (j) “State Motor Vehicle Fuel Tax” means the Washington State Motor Vehicle Fuel Tax.
- (k) “Tribal Council” means the Nisqually Indian Tribal Council.
- (l) “Tribal Member” means an enrolled member of the Nisqually Indian Tribe.
- (m) “Tribal Retailer” means a fuel retailer wholly owned by the Nisqually Tribe and located in Indian Country.
- (n) “Tribe” or “Tribal” means or refers to the Nisqually Indian Tribe.

38.11 SALES AND TAXATION

38.11.01 Tribal Sales Permitted

Only Tribal Retailers are authorized to make sales of Motor Vehicle Fuel to the ultimate consumer within the Reservation.

38.11.02 State Compliance Required

Tribal Retailers, businesses and Tribal Members are required to purchase only fuel on which the State fuel tax has been paid, and purchase fuel only from persons or companies operating lawfully in accordance with State law.

38.11.03 Fuel Tax Assessed

- (a) The Tribe shall impose taxes on all sales by Tribal Retailers of Motor Vehicle Fuel within the Reservation commensurate with the rate imposed by the State. The Tribal tax shall be the amount of any credit or exemption the Tribe obtains from the State tax by agreement.
- (b) Sales of Motor Vehicle Fuel shall not be subject to a general Tribal sales tax rate under other provision of Tribal law.

38.11.04 Sales to Nisqually Tribal Members

- (a) Sales made to Nisqually Tribal Members may be made at a reduced price of thirty one (31) cents per gallon or such other rate to be made at the discretion of the Tribal Council.
- (b) Sales made to Nisqually Tribal Members at a discount must be recorded as such by Tribal Retailers.

38.11.05 No Reduction of Price

Tribal Retailers may not pass on to the retail customer the State tax included in the price of fuel and use the amounts of tax remitted or refunded to the Tribe pursuant to an agreement with the State to reduce the price at which fuel is sold from the Tribal Retailer's outlet.

38.11.06 Non-Compliance with Ordinance

Any person, including Tribal Retailers, who makes sales of fuel in violation of any provision of this Ordinance shall be subject to civil action pursuant to the Nisqually Rules of Civil Procedure.

38.12 TAX COLLECTION AND USE

38.12.01 Collection and Payment of Tax

Every Tribal Retailer is liable for collecting the Tribal Fuel Tax. The Tribal Retailer shall maintain accurate written records for the purchase and retail sales of Motor Vehicle Fuel, and shall make such records available for inspection by the Tribal Chief Financial Officer and/or third party auditor retained by the Tribe. Records shall be maintained for no less than three years after the audit is accepted by the appropriate oversight agency.

38.12.02 Use of Fuel Tax by Tribe

Fuel tax proceeds retained by the Tribe or amounts equivalent thereto shall be expended upon planning, construction, and maintenance of roads, bridges, boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes.

38.13.01 Severability

In the event that any section or provision of this Code is held invalid, it is the intent of the Tribal Council that the remaining sections or provisions of this Code shall continue in full force and effect.