

Title 17 – Tax
Chapter 10 – Interim Trust Improvement Use and Occupancy Tax

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Legislative History

Enacted:

Ord. 341 Enacting Title 17, Chapter 10 – Interim Trust Improvement Use and Occupancy Tax (10/15/14), BIA (10/16/14).

17-10.010 Title

This Chapter shall be referred to as the “Interim Trust Improvement Use and Occupancy Tax Code.”

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.020 Authority

This Chapter is enacted pursuant to Article VI, Sections 1(a), (c), (g), (h), (i), (k) and (l), of the Swinomish Constitution and By-Laws originally ratified by the Tribe on November 16, 1935, and approved by the Secretary of the Interior on January 27, 1936, and as most recently amended and ratified by the Tribe on September 7, 1985 and approved by the Secretary of the Interior on October 22, 1985; the inherent sovereign powers of the Swinomish Indian Tribal Community; rights reserved in the Treaty with the Dwamish, Suquamish, etc., (“Treaty of Point Elliott”), 12 Stat. 927 (January 22, 1855), 25 C.F.R. § 162.017, and such other powers as have been delegated to, vested in, or confirmed in the Tribe through the actions of the United States.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.030 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this Chapter shall be as set forth in this Section:

- (A) **“Assessed Value”** means the Fair Market Value of a Permanent Improvement the use of which is subject to taxation under this Code as determined by the Skagit County Assessor for purposes of State, Skagit County and local taxing district taxes imposed for the year subsequent to the year of assessment; *provided*, however, that if the Assessor’s

determined value was altered as a result of a taxpayer contest, then the “Assessed Value” is the value of the property as finally determined in such contest.

- (B) **“Building” or “Buildings”** means any structure attached to, located on, or placed on land.
- (C) **“Chief Financial Officer”** means the Chief Financial Officer of the Swinomish Indian Tribal Community.
- (D) **“Doing business”** means engaging in any activity, whether temporary, intermittent, occasional, seasonal or otherwise, with the object of gain, benefit, advantage or other return, whether direct or indirect, immediate or future, tangible or intangible, or economic or non-economic, and specifically includes the lease, sublease, or assignment or acceptance of assignment of a lease or sublease of Swinomish Indian Lands and the purchase, ownership, sale, lease, sublease, use or occupancy of any Permanent Improvement on Swinomish Indian Lands.
- (E) **“Entity”** means any sole proprietorship, partnership, company, limited liability company, corporation, joint venture, club company, joint stock company, business trust, trust, estate, firm, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, or any other legal organization.
- (F) **“Fair Market Value”** means the amount of money that a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied.
- (G) **“Land Lease”** means a written contract whereby the lessee is granted a right to possess, use or occupy land for a specified purpose and duration, and includes a master lease, a sublease and a lease or sublease that has been assigned.
- (H) **“Local Taxing District”** means a taxing district located in Skagit County, Washington that was established pursuant to the laws of the State of Washington, including but not limited to a school, fire, library or port district.
- (I) **“Notice”**, as it is required to be given in this Chapter, means written notification sent via United States First Class mail, postage prepaid.
- (J) **“Occupy”** means to hold, possess, do business, reside, or otherwise conduct activity in or on.
- (K) **“Permanent Improvement”** means a building or other property that is attached to land and that is regarded as an irremovable part of the real property.
- (L) **“Person”** means any individual, entity, lessee, sublessee, receiver, assignee, or trustee in bankruptcy.

- (M) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
- (N) **“Skagit County”** means Skagit County, Washington, a political subdivision of the State of Washington, and where context requires includes the elected officials and authorized employees of Skagit County.
- (O) **“Skagit County Tax Rate”** means the total numerical amount of property taxes levied for a specified year by the State of Washington, Skagit County and Local Taxing Districts expressed in terms of dollars per \$1,000 of assessed value, e.g., \$1.00 per \$1,000 of assessed value.
- (P) **“State”** means the State of Washington, and where context requires includes the elected officials and authorized employees of the State.
- (Q) **“Swinomish Indian Lands”** means Federal Indian trust or restricted land, whether located within or without the boundaries of the Swinomish Indian Reservation, that is owned in the name of the United States and held in trust for the Swinomish Indian Tribal Community and/or an individual Indian or Indians and that is within the jurisdiction of the Swinomish Tribe.
- (R) **“Tax Rate”** means the numerical amount of taxes to be levied expressed in terms of dollars per \$1,000 of assessed value, e.g., \$1.00 per \$1,000 of assessed value.
- (S) **“Tax Year”** means the year in which a tax established by this Chapter, or the initial installment thereof, is due and payable.
- (T) **“Tribal Court”** means the court of the Swinomish Indian Tribal Community.
- (U) **“Tribe”** means the Swinomish Indian Tribal Community, a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, whose governing body is the Swinomish Indian Senate.
- (V) **“Use”** means to carry out a purpose or action by means of.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.040 Jurisdiction

- (A) This Chapter shall apply to the full extent of the jurisdiction of the Swinomish Indian Tribal Community.
- (B) **Condition of Use.** Compliance with this Chapter is hereby made a condition of the lease, sublease, assignment or acceptance of assignment of a lease or sublease, use or occupancy of any Swinomish Indian Lands, or the purchase, ownership, sale, lease,

sublease, use or occupancy of any Permanent Improvement on Swinomish Indian Lands to the maximum extent permitted by law.

- (C) **Deemed to Consent.** Any person who does business, resides, leases, subleases, assigns or accepts assignment of a lease or sublease, uses or occupies any Swinomish Indian Lands, or who purchases, owns, sells, leases, subleases, uses or occupies any Permanent Improvement on Swinomish Indian Lands shall be deemed thereby to have consented to the following:
- (1) To be bound by the terms of this Chapter;
 - (2) To the exercise of jurisdiction by the Swinomish Indian Tribal Community over said person, Permanent Improvements, and by the Tribal Court in legal actions arising pursuant to this Chapter; and
 - (3) To detention, service of summons and process, search and seizure and forfeiture of property in conjunction with legal actions arising pursuant to this Chapter.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.050 Tribal Governmental Programs and Services.

The Senate finds that, as a result of actions and decisions by the United States, the ownership of the land within the Reservation is shared by the Tribe, the United States in trust for the Tribe and individual Indians, and non-Indians, resulting in a patchwork of ownership and Tribal ability to provide governance, programs and services. Within this context, programs and services made available by the Tribal government benefit persons in various areas of the Reservation include:

- (A) governmental services, such as:
- (1) public sewage collection and disposal systems,
 - (2) water systems to provide safe drinking water and fire protection,
 - (3) Tribal roads, and
 - (4) assignment of Tribal paraprofessional employees to provide educational services off-Reservation in the La Conner public school system;
- (B) maintenance of public health, safety, welfare, and law and order, including:
- (1) Tribal police,
 - (2) Tribal fisheries management and enforcement, with the State of Washington
 - (3) hazardous emergency response,

- (4) managing, preserving, conserving, restoring, and enhancing the Reservation environment and habitats, and regulation and protection of Reservation air, water, shorelines and sensitive areas, and
- (5) comprehensive land use planning and regulation,
- (C) a Tribal Court system with general jurisdiction for the resolution of civil disputes and limited jurisdiction for the prosecution of criminal actions;
- (D) protection of Reservation lands and natural and cultural resources;
- (E) provision and maintenance of parks and open space, such as Kukutali Preserve, co-owned and managed with Washington State Parks
- (F) support of Reservation community, cultural and religious events, institutions and activities, including the Treaty Day, Blessing of the Fleet, Memorial Day, Fourth of July, Canoe Journey, Swinomish Days, Veterans Day and winter holiday and cultural events;
- (G) promotion and regulation of Reservation businesses and economic development; and
- (H) provision of employment opportunities for both members and non-members of the Tribe.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.060 Need for Tribal Governmental Revenue.

The Senate finds that:

- (A) The entire Reservation community, both Indian and non-Indian, shares a portion of Fidalgo Island, and whether leasing, subleasing, using or occupying Swinomish Indian Lands or purchasing, owning, selling, leasing, subleasing, assigning or accepting assignment of, using or occupying a Permanent Improvement, residing, being employed, or otherwise doing business on the Reservation, directly and indirectly benefits from Tribal governance of the Reservation and Tribal governmental services and programs.
- (B) Tribal services and programs improve the overall quality of life on the Reservation, whether those programs and services are provided directly to Tribal members, Native Americans or the entire Reservation community, by preserving and enhancing the natural environment, providing parks and other open or public spaces, public safety, roads, enhancing physical and mental health, education, and continuing and enhancing Swinomish social, economic and cultural life, thereby contributing to the social safety net and enriching the fabric of Reservation life.
- (C) Services provided by the Tribe to Tribal members and other Natives seek to reduce historic disparities in Native American health metrics, education and economic outcomes, thereby

reducing inequality and inequity across the Reservation community as a whole and promoting social stability and welfare.

- (D) Tribal services and programs supplement or replace services or programs that would or should otherwise be provided or operated by other governments, and thereby relieve other units of government from the full burden of providing these services and programs.
- (E) It is appropriate, therefore, that the persons occupying or using Permanent Improvements on Swinomish Indian Lands who benefit, directly or indirectly, from this wide variety of Tribal governmental services and programs contribute a portion of the costs of the Tribal programs and services through paying the tax established by this Chapter.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.070 Transition from State/County/Local to Tribal Taxation and Continuation of Prior Law.

(A) Transitional Objectives.

- (1) On July 30, 2013, the United States Court of Appeals for the Ninth Circuit issued its decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, ruling that Washington state and local property taxes may not be imposed on permanent improvements on land owned by the United States and held in trust for Indians, without regard to the ownership of the improvements.
- (2) On March 31, 2014, the Washington State Department of Revenue issued Property Tax Advisory PTA 1.1.2014, concluding that state and local governments cannot assess property tax on permanent improvements built on trust land.
- (3) It is the intent of the Senate that the interim, transitional tax imposed by this Chapter be in the same amount, and be applicable in the same fashion, as the total of the State, County and local taxing district taxes imposed on trust improvements on Swinomish Indian Lands without regard to regard to the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization* or Department of Revenue issued Property Tax Advisory PTA 1.1.2014.
- (4) The Senate enacts this Chapter, in part, to reduce disruption in the transition to Tribal taxation from State, County and local taxing district.
- (5) Imposition of the tax and credit established in this Chapter will not result in double-taxation.

- (6) Exercise of the Tribe's taxing authority through enactment of the Interim Trust Improvement Use and Occupancy Tax will ensure continuity of taxation relating to Permanent Improvements located on Swinomish Indian Lands by a jurisdiction with taxing authority.
- (7) Skagit County, on behalf of itself, local taxing districts and the State of Washington, assessed Permanent Improvements on Swinomish Indian Lands and issued tax statements to the owners of such improvements seeking payment of property tax on those improvements to be paid in 2011, 2012, 2013 and either in April 2014 (full year payment) or in April and October 2014 (half-year payments).
- (8) Under Washington law, a claim for a property tax refund must be filed with the county treasurer within three years after the due date of the payment sought to be refunded, (RCW 84.69.030(1)(b)), and an action for a refund that is not granted within six months of the date of filing of the claim for refund may be filed within one year after the date of filing of the refund claim, (RCW 84.69.120). According to the Department of Revenue "FAQs for County Assessors" concerning the *Great Wolf Lodge* decision, a claim for refund for taxes due on April 30, 2011 must have been filed by April 30, 2014.
- (9) The Senate concludes that under the unique circumstances presented it would be detrimental to the State, County and local taxing districts for refunds to be issued by the County of taxes paid in 2011, 2012, 2013 or 2014 to or on behalf of the State, County and local taxing districts that anticipated, received, budgeted and spent in reliance upon these tax revenues.
- (10) The Senate wishes to reduce disruption of the programs, services and budgets of the State, County and local taxing districts in the event any refunds should be issued by the County or any court of taxes paid in 2011, 2012, 2013 or 2014.
- (11) Under these unique circumstances, the Senate is applying the tax in this Chapter to Tax Years 2011, 2012, 2013 and 2014, and directs that any revenues raised by the taxes established by this Chapter for these years shall be shared with the State, County and local taxing districts in the amount of any taxes that were refunded to taxpayers pursuant to or under the authority of the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, or Washington State Department of Revenue Property Tax Advisory PTA 1.1.2014, or other determinations or decisions implementing these legal authorities; *provided*, however, that the Tribe shall hold any taxes established by this Chapter that are paid under protest directly to the Tribe until the period for requesting a refund has expired, or, if a request for refund is submitted, until the refund request is resolved in a decision that is final.

- (12) The Senate finds that applying the tax in this Chapter to Tax Years 2011, 2012, 2013 and 2014 will not result in an unanticipated tax burden and that the application of the tax to these specific Tax Years is reasonable, and not excessive, based on the unique circumstances presented.

(B) Continuation of Prior Law.

The Senate intends, in order carry out the transitional objectives set forth in Subsection (A), that the provisions of this Chapter insofar as they are substantially the same as statutory provisions of the State of Washington relating to the imposition of property taxes, assessments and levies on Permanent Improvements prior to or regardless of the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, shall be construed as in effect a transitional continuation of such substantially similar and then-existing law.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.080 Identification of Tax Year. All annual taxes under this Chapter may be known and designated as taxes of the year in which such taxes, or the initial installment thereof, shall become due and payable.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.090 Number and gender.

Every word importing the singular number only may be extended to or embrace the plural number, and every word importing the plural number may be applied and limited to the singular number, and every word importing the masculine gender only may be extended and applied to females as well as males.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

Subchapter I – Imposition of Tax and Allowance of Credit

17-10.100 Imposition of Interim Trust Improvement Use and Occupancy Tax.

A transitional Interim Trust Improvement Use and Occupancy Tax is imposed for the years 2011, 2012, 2013 and 2014 upon and for the privilege of constructing, placing, owning, occupying or using Permanent Improvements on Swinomish Indian Lands pursuant to a Land Lease, at the tax rate provided in Section 17-10.110 and applied to the Assessed Value of the Permanent Improvements. The tax shall be collected from the person or entity owning the Permanent Improvement.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.110 Rate of Tax.

(A) The tax imposed by Section 17-10.100 shall be at the Skagit County Tax Rates for every \$1,000.00 of Assessed Value of the Permanent Improvement for each tax year, as set forth numerically below:

- (1) for tax year 2014, \$13.16304;
- (2) for tax year 2013, \$13.29718;
- (3) for tax year 2012, \$12.31568;
- (4) for tax year 2011, \$11.75782.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.120 Credit for Taxes Paid to County.

(A) **Calculation of Credit for Property Taxes Paid Prior to Enactment.**

- (1) A dollar-for-dollar credit shall be applied to reduce the amount of tax that would otherwise be owing under this Chapter for tax year 2011, 2012, 2013 or 2014 in the amount of the taxes actually and timely paid in or for each such year to or on behalf of the State, Skagit County and local taxing districts in satisfaction of taxes imposed, assessed or levied upon the value of each Permanent Improvement, which such taxes, if actually and timely paid and not refunded, shall be considered for purposes of this Chapter as if they had been made in payment of the tax imposed by this Chapter.
- (2) The credit provided for in this Section shall not include the amount of any taxes paid to or on behalf of State, County and local taxing districts that have been refunded by the State, County or local taxing districts prior to enactment of this Chapter pursuant to or under the authority of the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, Washington State Department of Revenue Property Tax Advisory PTA 1.1.2014, or other determinations or decisions implementing these legal authorities.
- (3) State, Skagit County and local taxing district taxes shall be considered, for purposes of the credit provided for in this Section, to have been timely paid if the payment was made prior to or on the date due or, if made after the date due, were accompanied by payment of any required fee, interest or penalty such that the State, Skagit County and local taxing districts consider the taxes to have been paid in full.

- (B) **Adjustment of Credit for Property Taxes Refunded After Enactment.** Any credit that would otherwise be provided for in Subsection (A) shall be reduced, pursuant to the procedure in Section 17-10.150(D)(1), by the amount of any taxes paid to or on behalf of State, County and local taxing districts that are refunded by the State, County or local taxing districts after the enactment of this Chapter pursuant to or under the authority of the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, Washington State Department of Revenue Property Tax Advisory PTA 1.1.2014, or other determinations or decisions implementing these legal authorities.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.130 Exemptions.

An improvement exempt from State, County or local taxing district property tax for 2011, 2012, 2013 or 2014 is exempt from the tax provided for in this Chapter for each such year and to the same extent; *provided*, however, that no improvement shall be exempt from the tax provided for in this Chapter on the basis of or under the authority of the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, Washington State Department of Revenue Property Tax Advisory PTA 1.1.2014, or other determinations or decisions implementing these legal authorities.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.140 Exclusive County and State Review of Skagit County Actions.

- (A) All taxpayer claims and disputes concerning Skagit County's assessments, notices, billings, collections, protests and claims for refunds concerning taxes on Permanent Improvements on Swinomish Indian Lands for 2011, 2012, 2013 and 2014 shall be resolved solely and exclusively through and in accordance with processes and procedures of Skagit County and the State of Washington that are conducted pursuant to the laws of Skagit County and the State of Washington.
- (B) Nothing in this Chapter is intended to, or shall, extend or alter any due date, deadline or procedure under the laws of Skagit County or the State of Washington for a taxpayer to dispute or seek review of any assessment, notice, billing, collection, protest and claim for refund.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

Subchapter II – Administration and Enforcement

17-10.150 Administrative Procedures for Payment of Taxes.

- (A) **Date Tax is Applied.** The Assessed Value of Permanent Improvements shall be utilized to determine the tax imposed on January 1 of the following year (i.e. of the "Tax Year").

- (B) **Date Tax is Due.** The amount of any tax imposed and owing as provided by this Chapter for 2011, 2012, 2013 and 2014, after application of the credit provided for in Section 17-10.120, shall be due and payable on the earliest of either December 31, 2014 or within thirty days of the date of any notice of taxes owed that is issued pursuant to Subsection (E) of this Section.
- (C) **Sale of Permanent Improvement**
- (1) The tax imposed by this Chapter is due even if the Permanent Improvement is sold or transferred after January 1 of the tax year.
 - (2) As between the grantor or vendor and the grantee or purchaser of any Permanent Improvement, when there is no express agreement as to payment of the taxes thereon due and payable in the calendar year of the sale or the contract to sell, the grantor or vendor shall be liable for the same proportion of such taxes as the part of the calendar year prior to the day of the sale or the contract to sell bears to the whole of such calendar year, and the grantee or purchaser shall be liable for the remainder of such taxes and subsequent taxes.
- (D) **Tax Owing by Reason of Refund by County of Taxes Following Enactment**
- (1) Within thirty days of receiving notice from the State, County, local taxing district or taxpayer of the amount of any taxes previously paid to or on behalf of State, County and local taxing districts that are refunded by the State, County or local taxing districts after the enactment of this Chapter, pursuant to or under the authority of the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, Washington State Department of Revenue Property Tax Advisory PTA 1.1.2014 or other determinations or decisions implementing these legal authorities, the Chief Financial Officer shall issue a notice of taxes owed stating of the amount of such taxes, plus the administrative fee(s) pursuant to Section 17-10.170, due to the Tribe.
 - (2) The amount of such taxes and fees shall be due and payable within thirty days of the date of the notice of taxes due.
- (E) Payments of taxes due postmarked after the applicable date in Sections 17-10.150(B) or 17-10.150(D) will be considered delinquent and will be returned for payment of interest. Taxes will not be processed without interest.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.160 Claim for Refund of Interim Trust Improvement Use and Occupancy Tax Paid to Tribe.

(A) **Refund for Overpayment.** Taxpayers who have paid to the Tribe a tax imposed by this Chapter in error, or who erroneously overpaid to the Tribe a tax imposed by this Chapter, must make a written request to the Chief Financial Officer for a refund. The request must state each and every one of the factual or legal grounds upon which the tax is claimed to have been erroneously paid or overpaid, and must include all evidence supporting the claimed error or overpayment.

- (1) The request for refund must be postmarked or received by the Chief Financial Officer within one year of the due date of the payment sought to be refunded. Any untimely request will not be considered.
- (2) Interest on refunds at the rate of one percent (1%) per month accrues from the date taxes were paid and will be included in the amount to be refunded, unless a refund is made within 60 days of the payment of the tax.
- (3) The Chief Financial Officer shall make a decision upon the request for refund within one hundred and eighty (180) days of receipt of the request for refund.
- (4) The Chief Financial Officer's decision is subject to appeal pursuant to Subchapter III. If the decision is not timely appealed, the decision is final and not subject to further review.
- (5) A tax for which a refund request is made, but such request does not comply with this Section, is conclusively considered to be properly paid and non-refundable.

(B) **Protest of Tax Claimed to be Unlawful or Otherwise Invalid.**

- (1) In order to preserve a right to seek a refund of any tax paid to the Tribe pursuant to this Chapter, the imposition or calculation of which is claimed to be unlawful or otherwise invalid or incorrect, a taxpayer must make a timely payment of the tax to the Tribe and must accompany that timely payment with a written protest directed to Chief Financial Officer setting forth each and every one of the factual or legal grounds upon which the tax, any portion of the tax, or any associated fee, penalty or interest, is claimed to be unlawful or otherwise invalid or incorrect.
 - (a) No protest accompanying a tax payment shall be deemed to include protest of taxes due in preceding or succeeding years.
 - (b) A statement on a check or money order that the tax is being paid under protest is not sufficient to preserve the right to seek a refund in court.
- (2) When the taxpayer submits a written protest as provided in this Section, the taxpayer is thereafter prohibited from raising grounds not set forth in the protest as a basis for the dispute.

- (3) Any tax paid without a written protest, as provided in this Section, is conclusively considered to be voluntarily paid and non-refundable.
- (4) A prominent notice of the written protest requirement shall be included as part of, or enclosed with, property tax notices or statements issued pursuant to this Chapter.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

(C) Claim for Refund of Tax Claimed to be Unlawful or Otherwise Invalid.

- (1) Taxpayers may claim a refund of a tax paid to the Tribe for which a written protest has been made by making a written request to the Chief Financial Officer for a refund. The request must include a copy of the written protest submitted in accordance with Section 17-10.160(B), and must state each and every one of the factual or legal grounds upon which the tax, any portion of the tax, and any associated fee, penalty or interest, is claimed to be unlawful or otherwise invalid or incorrect, and must include all evidence supporting the claimed error or overpayment.
- (2) The request for refund must be received by the Chief Financial Officer within one year of the due date of the payment sought to be refunded. Any untimely request will not be considered.
- (3) Interest on refunds, at the rate set forth in Washington Administrative Code 458-18-220 for the year in which the tax was due, accrues from the date taxes were paid and will be included in the amount to be refunded, unless refund is made within 60 days of the payment of the tax.
- (4) The Chief Financial Officer shall make a decision upon the request for refund within one hundred and eighty (180) days of receipt of the request for refund.
- (5) The Chief Financial Officer's decision is subject to appeal pursuant to Subchapter III. If the decision is not timely appealed, the decision is final and not subject to further review.
- (6) A tax paid for which a refund request is not made in compliance with this Section is conclusively considered to be properly paid and non-refundable.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.170 Administration of Chapter.

- (A) This Chapter shall be administered by or under the supervision of the Tribe's Chief Financial Officer, who may contract with specialized professionals to provide information or services necessary to impose, collect, enforce and account for the tax.

- (B) The Swinomish Indian Senate is authorized to enter into intergovernmental agreements with Skagit County or local taxing districts for the performance of any or all of the Tribal duties and responsibilities imposed, and actions authorized, by this Chapter, and for the distribution of taxes and other monies paid pursuant to this Chapter.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.180 Administrative Fee

In addition to the tax imposed by this Chapter, an administrative fee of \$500.00 is imposed for each year in which any amount of taxes is owing and payable after application of any credit that may be available pursuant to Section 17-10.120.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.190 Interest on Late Payments.

If any sum payable under this Chapter is not paid to the Tribe by the date specified in Sections 17-10.150(B) or 17-10.150(D), there shall be added to the unpaid sum interest at the rate of one percent (1%) per month on the amount of the taxes due for the full year and on the amount of any administrative fee due, until the tax and administrative fee are paid in full.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.200 Penalties for Late Payment.

In addition to interest on late payments, as provided in Section 17-02.190, if any payment is not made by the due date specified in this Chapter, a penalty of three percent (3%) of the total tax due for the year (exclusive of the administrative fee, interest and other penalties) shall be added to the taxes owed if still delinquent thirty days after the date the tax is due. An additional penalty of eight percent (8%) of the total tax due for the year (exclusive of the administrative fee, interest and other penalties) shall apply if the taxes owed remain delinquent one hundred and eighty (180) days after the date the tax is due.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.210 Consequences of Refusal or Failure to Pay.

- (A) Any person failing or refusing to pay the tax imposed by this Chapter shall be assessed the interest, penalties and costs of collection set forth in Sections 17-10.180 – 17-10.200.
- (B) Any person failing or refusing to pay the tax imposed by this Chapter may, in addition to assessment of the interest, penalties and costs of collection set forth in Sections 17-10.180 – 17-10.200, be excluded from the Reservation at the discretion of the Senate and in accordance with Swinomish law.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.220 Cost of Collection Actions.

- (A) In addition to the tax owing, administrative fee, interest and penalties imposed by this Chapter, the Tribe shall recover its court costs, attorneys' fees and litigation expenses incurred in collecting taxes owing and payable after application of the credit established by Section 17-10.120.
- (B) Any judgment entered in any action brought to enforce the provisions of this Chapter or to collect any sums due, including fees, interest and penalties, shall bear interest at the rate of one percent (1%) per month from the date of the entry of the judgment until the judgment is paid.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.230 Tax Liens

- (A) All taxes and fees imposed or assessed by and pursuant to this Chapter are declared to be and are a lien upon the Permanent Improvement upon which they have been or may hereafter be imposed or assessed. The lien shall include all charges and expenses of and concerning the taxes which, by the provisions of this Chapter, are directed to be made, including fees, interest, penalties and costs of collection.
- (B) The lien has priority to and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the property may become charged or liable.
- (C) The lien is in effect from and including the date the tax is due until the tax, fees, interest, penalties and costs of collection are paid in full.
- (D) Notwithstanding Section 17-10.150(C), the lien follows the property, such that a new owner of a Permanent Improvement may be held liable if the previous owner does not pay the tax.
- (E) In the event of the destruction of a Permanent Improvement, the lien imposed pursuant to this Section shall attach to and follow the proceeds of any insurance policy on the Permanent Improvement and the insurer shall pay to the Tribe from such insurance proceeds all taxes, fees, interest, penalties and costs of collection that are due.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.240 Foreclosure of Tax Liens

- (A) When any tax owing pursuant to this Chapter has been delinquent for at least three years, the Chief Financial Officer shall issue a notice of delinquency.
- (B) Upon issuance of the notice of delinquency, the Chief Financial Officer and the Office of Tribal Attorney shall initiate and prosecute legal proceedings in Tribal Court to foreclose in the name of the Tribe the tax liens identified in the notice.
- (C) The foreclosure shall be conducted in accordance with Section 17-10.250 and with Swinomish Tribal Code Title 3, Chapter 2 - Rules of Civil Procedure then in effect.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.250 Procedure for Tax Foreclosures

[Reserved]

Subchapter III – Appeals, Computation of Time and Applicable Law

17-10.260 Decisions Subject to Appeal.

The decisions of the Chief Financial Officer pertaining to the applicability or amount of any tax, fees, interest or penalty imposed, or refund refused pursuant to this Chapter may be appealed pursuant to this Subchapter.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.270 Tribal Administrative Remedies and Tribal Court

All cases or controversies arising under the terms and provisions of this Chapter shall be heard only in the Swinomish Tribal Court, and only as provided in this Subchapter. An applicant or other aggrieved party must timely and properly exhaust any and all administrative procedures and remedies provided in this Chapter before seeking review in Tribal Court.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.280 Presumption of Correctness

- (1) Upon determination of the Assessed Value of a Permanent Improvement by the Skagit County Assessor, it shall be conclusively presumed that the determination of the Assessor in establishing such Assessed Value is correct.
- (2) Any dispute as to the Assessed Value of a Permanent Improvement can and must have been or be timely asserted and resolved by the disputing party using procedures

administered by the State and Skagit County and established pursuant to the laws of the State of Washington, which shall provide and be the only remedy for such a dispute.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.290 Appeals of Protests from the Chief Financial Officer.

- (A) A taxpayer aggrieved by an action or decision of the Chief Financial Officer pursuant to this Chapter may appeal such decision to Tribal Court provided the taxpayer has filed a written request for refund, as applicable and as required by Section 17-10.160. The appeal must be filed within thirty (30) calendar days from the date of the Chief Financial Officer's determination upon the request for refund. Any appeal to the Tribal Court shall identify the name of the taxpayer seeking review, the interest of the taxpayer in the decision appealed from, and shall name as respondent only the Chief Financial Officer in his or her official capacity. The taxpayer shall attach a copy of the written request for refund and all evidence submitted with the request, the Chief Financial Officer's determination upon the request and shall state each and every one of the factual or legal grounds upon which the tax, any portion of the tax, or any associated fee, penalty or interest, is claimed to be unlawful or otherwise invalid or incorrect or to have been erroneously paid or overpaid. The taxpayer shall serve a copy of the appeal upon the Chief Financial Officer and the Office of Tribal Attorney in accordance with Swinomish Tribal Code Title 3, Chapter 2 - Rules of Civil Procedure then in effect.
- (B) The Tribal Court shall set a time and place for a hearing and provide written notice to the taxpayer and the Chief Financial Officer of the hearing.
- (C) The review on appeal by the Swinomish Tribal Court shall be limited to the issues identified in the request for refund. The Court shall not consider any issue that was not raised in the request for refund.
- (D) The Tribal Court may accept additional evidence that is material and relevant to the issues on appeal upon a showing by the taxpayer of good cause for not submitting the evidence to the Chief Financial Officer with the request for refund.
- (E) The Tribal Court review shall be conducted by the Court, without a jury. Subject to the limitation in Subsection (D) and the nature of the proceeding as judicial review of an administrative decision, the review shall be in accordance with those provisions of the Swinomish Rules of Civil Procedure that are determined to be applicable by the Tribal Court; *provided*, however, that discovery under such Rules shall be allowed only as determined by the Court to be necessary to allow judicial review of the issues raised on appeal.

- (F) The Tribal Court shall consider the evidence presented and arguments presented in support thereof.
- (G) After a full and complete review of the evidence, the Tribal Court shall issue a written decision, setting forth the reasons for the decision. Notice and a copy of the decision shall be sent to the taxpayer and Chief Financial Officer.
- (H) The Tribal Court shall affirm the decision of the Chief Financial Officer upon review unless the appealing party demonstrates to the Court that the decision of the Chief Financial Officer:
 - (1) Is contrary to Swinomish or Federal law; or
 - (2) Is arbitrary or capricious; or
 - (3) Is not supported by substantial evidence known to the Chief Financial Officer or submitted with the request for refund by the taxpayer; or
 - (4) Should be reconsidered by the Chief Financial Officer in light of additional evidence considered by the Court that was not known to the Chief Financial Officer and that may reasonably be expected to change the decision appealed.
- (I) If the Court determines that the aggrieved party has met the burden set forth in Subsection (H), then the Court shall reverse the decision appealed from and shall remand the matter to the Chief Financial Officer for further proceedings in accordance with the Court's ruling. The Tribal Court shall not have authority to grant any relief to the taxpayer other than an order reversing the decision appealed from and remanding the matter to the Chief Financial Officer for further proceedings. If the Court determines that the aggrieved party has not met the burden set forth in Subsection (H), then the Court shall issue an order affirming the decision appealed from.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.300 Appeals from the Tribal Court

- (A) Any appeal from a decision of the Tribal Court shall be filed and adjudicated in accordance with the Swinomish Rules of Appellate Procedure.
- (B) The review by the Swinomish Tribal Court of Appeals shall be limited to the evidentiary record made in the proceedings before the Tribal Court. The Court of Appeals shall not consider any issue, argument or evidence that was not raised in the record of proceedings before the Tribal Court.
- (C) The Tribe may charge an appealing party the reasonable costs of preparing copies of the record for the Swinomish Tribal Court of Appeals and for the appealing party.

- (D) The Court of Appeals shall affirm the decision of the Tribal Court upon review unless the appealing party demonstrates to the Court that the decision of the Tribal Court:
- (1) Is contrary to Swinomish or Federal law;
 - (2) Is arbitrary or capricious; or
 - (3) Is not supported by substantial evidence in the record of proceedings held before the Tribal Court.
- (E) If the Court determines that the aggrieved party has met the burden set forth in Subsection (D), then the Court shall reverse the decision appealed from and shall remand the matter to the Court for remand to the Chief Financial Officer for further proceedings in accordance with the Court's ruling. The Court of Appeals shall not have authority to grant any relief other than an order reversing the decision appealed from and remanding the matter to the Chief Financial Officer for further proceedings.
- (F) The decision of the Court of Appeals shall be final, and is not subject to further review.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.310 Time and Finality

- (A) The date of notice of any decision shall be the date on which the decision is mailed by the body making the decision to the last known address of the applicant. The date of notice shall be stated in the decision.
- (B) All time periods set forth in this Chapter shall be calculated in accordance with Rule 3-02.080(A), "Computation and Extension of Time", of the Swinomish Rules of Civil Procedure.
- (C) If a decision of the Chief Financial Officer or Tribal Court is not appealed within the time period set forth in this Subchapter, then that decision is final and conclusive, and is not subject to further review.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.320 Sovereign Immunity

The sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, or by any action commenced pursuant to this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Senate, the Department, the Chief Financial Officer, all tribal officials, employees, any specialized professional with whom the Tribe has contracted under this Chapter, as to all actions taken in, or concerning, the administration or enforcement of this Chapter, and as

to all actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

Subchapter IV – Repealer, Severability and Effective Date

17-10.330 Repealer.

[Reserved]

17-10.340 Severability.

The invalidity of any section, clause, sentence, or provision of this Chapter shall not affect the validity of any part of this Chapter that can be given effect without such invalid part or parts.

[History] Ord. 341 (10/15/14) BIA (10/16/14).

17-10.350 Effective Date.

This Chapter is necessary for the immediate preservation of the public health, safety and welfare, the ongoing support of Tribal, State and County government and local taxing districts and the uninterrupted continuation of their existing functions and programs, and therefore shall take effect immediately.

[History] Ord. 341 (10/15/14) BIA (10/16/14).