

TRIBAL COUNCIL ACT 4.3

**AN ACT RELATING TO
FUEL TAXATION AND REGULATION**

BE IT ENACTED BY THE SNOQUALMIE TRIBAL COUNCIL

SECTION 1.0 - TITLE AND CODIFICATION

This Act shall be known as the Snoqualmie Tribal Fuel Taxation and Regulation Act and shall be codified as Title 4, Act 3 of the Snoqualmie Tribal Code.

SECTION 2.0 - STATUTORY AUTHORIZATION

The aboriginal and inherent sovereign power to govern the Snoqualmie Indian Tribe is vested in the Snoqualmie Tribal Council. Snoqualmie Tribal Council's authority includes the ability to manage all economic affairs and enterprises of the Tribe and to levy taxes, fees or special assessments upon persons or property within the jurisdiction of the Snoqualmie Indian Tribe. Snoq. Tr. Const. Art. VIII §§ 1(e),(h).

The Snoqualmie Tribal Council finds that there are unmet needs in funding for road construction and maintenance, transportation services, public safety, transportation infrastructure, public utilities and similar governmental programs that serve Tribal members, employees, customers and visitors to the Snoqualmie Tribe. The Snoqualmie Tribal Council finds that tax revenues are essential to the Tribes' ability to provide these and other governmental functions, and to finance government operations and economic development. Therefore, it is in the public interest of the Tribe and its members to help fund certain governmental functions (as detailed herein) through the sale of motor vehicle and special fuel and the collection of a fuel tax refund from the State of Washington.

This Act is further contemplated by the Agreement Concerning Taxation of Motor Vehicle Fuel and Special Fuel Between the Snoqualmie Indian Tribe and the State of Washington. To the extent that provisions of this Act conflict with the Agreement, the terms of the Agreement control.

SECTION 3.0 - PURPOSE AND SCOPE

The purpose of this Act is to regulate the purchase and sale of all fuel on Snoqualmie Tribal Lands for the benefit of the Tribe and its members. The Act shall be carried out in a manner consistent with the Tribe's inherent sovereign authority, the Snoqualmie Tribal Constitution, Snoqualmie Tribal Codes and the Agreement Concerning Taxation of Motor Vehicle Fuel and Special Fuel Between the Snoqualmie Indian Tribe and the State of Washington.

Any person or entity that resides, conducts business, or otherwise engages in a business transaction on Snoqualmie Tribal lands, or that receives benefits from the Tribal of any kind

whatsoever, shall be deemed to have consented to the jurisdiction of the Snoqualmie Indian Tribe.

SECTION 4.0 - DEFINITIONS

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

- (1) **“Agreement”** means the Agreement Concerning Taxation of Motor Vehicle Fuel and Special Fuel Between the Snoqualmie Indian Tribe and the State of Washington.
- (2) **“Essential governmental function”** has the meaning given in 26 C.F.R. § 305.7871-1(d) (2000).
- (3) **“Transportation-related purposes”** includes, without limitation, planning, construction, and maintenance of roads, bridges, boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes.
- (4) **“Finance Department”** means the Tribal Finance Department.
- (5) **“Fuel”** means motor vehicle fuel or special fuel.
- (6) **“Fuel distributor”** means a person who acquires fuel outside the bulk transfer-terminal system for importation, from a terminal or refinery rack located within Washington for distribution within Washington, or for immediate export outside the State of Washington.
- (7) **“IRS”** means the federal Internal Revenue Service.
- (8) **“Motor vehicle fuel”** means gasoline and any other inflammable gas or liquid, by whatsoever name the gasoline, gas, or liquid may be known or sold, the chief use of which is as fuel for the propulsion of motor vehicles or vessels.
- (9) **“Snoqualmie Tribal Lands”** means all lands over which the Snoqualmie Tribe exercises jurisdiction, including tribal fuel facilities and including but not limited to, the Reservation, other lands held in trust for the Tribe or an individual by the United States, and lands within the federal definition of “Indian Country” set forth in 18 U.S.C. § 1151.
- (10) **“Special fuel”** means diesel fuel, propane, natural gas, kerosene, biodiesel, and any other combustible liquid or gas by whatever name the liquid or gas may be known or sold for the generation of power to propel a motor vehicle on the highways, except it does not include motor vehicle fuel.
- (11) **“State”** means the State of Washington.
- (12) **“State fuel tax refund” or “refund”** means the fuel tax proceeds or an equivalent refunded by the State to the Tribe pursuant to the Agreement.

- (13) **“Terminal”** means a fuel storage and distribution facility that has been assigned a terminal control number by the IRS.
- (14) **“Tribal business”** means a business or enterprise that is wholly owned and operated by the Tribe and which is operating the tribal fuel facility.
- (15) **“Tribal fuel facility”** means a retail motor vehicle fuel facility that is wholly owned and operated by the Tribe or a Tribal business, and any facilities owned and operated by the Tribe or a Tribal business for bulk storage of motor vehicle or special fuel.
- (16) **“Tribe” or “Tribal”** means or refers to the Snoqualmie Indian Tribe.

SECTION 5.0 – REGULATION AND TAXATION OF FUEL PURCHASE AND SALES

5.1 Permitted Purchase and Sale of Fuel

- (a) Tribal Council authorization to purchase or sell fuel.
- (i) A Tribal business, as defined in Section 4.0 of this Act, is the only business authorized to sell fuel within Snoqualmie Tribal Lands.
- (ii) A Tribal business must obtain authorization by Resolution of Tribal Council prior to entering into any agreement to purchase or sell fuel, and before holding itself out as a Tribal business authorized to purchase and sell fuel.
- (iii) To receive authorization to operate a Tribal fuel facility or to purchase or sell fuel, a Tribal business must provide to Tribal Council policies and procedures for safe, lawful and efficient operation of the Tribal fuel facility consistent with all applicable Tribal, State and Federal law.
- (b) Tribal fuel facilities shall obtain written approval from Tribal Council of any fuel purchase contract.
- (c) Tribal fuel facilities may only purchase fuel:
- (i) from persons or companies operating lawfully in accordance with this Act and RCW 82.38 as a motor vehicle or special fuel distributor, supplier, importer, or blender; and
- (ii) on which State fuel tax has already been paid.

5.2 State Fuel Tax Pass Through and Refund

- (a) The Tribal business shall pass on to all retail customers the State fuel tax in the price of fuel.

(b) Within 10 business days after the last day of each month, the Tribal business must complete the following steps and generate a report for all fuel delivered to the Tribal fuel facility in the preceding month:

- (i) assemble and review all invoices for such fuel;
- (ii) verify the gallons of fuel purchased and received;
- (iii) verify the amount of State fuel taxes paid or included in the price of the fuel;
- (iv) certify the overall accuracy of the invoices;
- (v) provide all information necessary to complete the appropriate federal tax refund form for fuel used exclusively by the Tribe for essential governmental functions in the preceding month, if applicable; and

(vi) submit its report, the invoices, and the appropriate federal tax refund information to the Finance Department.

(c) Within 20 business days after receiving the report from the Tribal business for the preceding month, the Finance Department shall review the report, invoices, and any federal tax refund information and submit a fuel tax refund request to the Department of Licensing. The fuel tax refund request shall contain:

- (i) copies of the certified invoices for fuel purchased by the Tribal business for the preceding month;
- (ii) copy of the complete federal tax refund form for fuel used exclusively by the Tribe for essential governmental functions in the preceding month, if applicable; and
- (iii) the amount of refund to which the Tribe is entitled pursuant to the Agreement.

(d) The Chief Financial Officer shall promptly notify Tribal Council of:

- (i) monthly invoices or applicable federal tax refund form not timely submitted to the Department of Licensing; and
- (ii) refunds of state taxes owed to the Tribe which the State has not timely paid.

(e) In addition to application of subsections (a), (b), (c) and (d) above, for the purpose of a claim for exemption from federal fuel taxes under federal law, fuel sales for exclusive use by the Tribe for essential governmental functions shall be accounted for separately by the Tribe.

5.3 Tax Rate

The Tribe reserves the right to impose a Tribal fuel tax under this Act. In that event, the tax rate shall be established by Resolution of the Tribal Council and may be later changed by Tribal Council Resolution. In no event may the combined total of any State fuel tax passed on to retail

customers under this Act and any Tribal fuel tax imposed on retail customers under this Act be less than the then-current State fuel tax.

5.4 Exclusivity of Tax

This Act excludes all other taxes not included in the Agreement that may be imposed by the Tribe.

5.5 Verification and Use of Tax Refund

(a) State fuel tax refunds shall be sent to the Finance Department. Upon receipt of a refund, the Finance Department shall:

(i) verify that the Tribe has been refunded for 75% of the state tax paid on each gallon of fuel purchased by the Tribal business;

(ii) verify that the Tribe has been refunded for 100% of the state tax paid on each gallon of fuel purchased for exclusive use by the Tribe for essential governmental functions pursuant to Federal law; and

(iii) segregate the state fuel tax refund as "Fuel Tax Refund."

(b) Upon verification that the Tribe has received the full refund from the State to which it is entitled, the refund shall be allocated and spent by Tribal Council only for transportation-related purposes as defined in Section 4.0 of this Act.

(c) In any fiscal year in which the Tribe's expenditures for transportation-related purposes exceed fuel tax refund receipts, the Tribe may carry forward the additional expenditure amount in any subsequent year, up to ten (10) years.

(d) The Tribe shall not use the amounts of tax remitted or refunded to the Tribe from the State to reduce the price at which motor vehicle fuels or special fuels are sold from the Tribal fuel facility.

SECTION 6.0 – FUEL RECORDS, REPORTING AND AUDIT

6.1 Records

(a) Prior to the sale of fuel by a Tribal business, the Finance Department shall develop a records maintenance policy. At a minimum, the Finance Department shall maintain the following records:

(i) records documenting the use of the State fuel tax refund for transportation-related purposes; and

(ii) records supporting federal fuel tax exemption, including:

(A) Applicable federal tax refund forms and any accompanying schedules reflecting the number of gallons claimed for refund for federal fuel tax purposes; and

(B) Records reflecting essential governmental functions for which the federal tax exempt fuel was used.

(b) The Tribal business operating the fuel filling station shall maintain the following records:

(i) current licenses issued by the Department of Licensing belonging to any fuel supplier, distributor or blender from which the Tribe is purchasing fuel;

(ii) copies of agreements entered into with any fuel distributor; and

(iii) current and accurate records of fuel purchases and sales by the Tribal business, whether the consumer pays by cash, credit or voucher.

(b) Records shall be maintained by the Finance Department and Tribal business for no less than three years after an audit is accepted by Tribal Council. Documents supporting federal fuel tax exemption, including applicable federal tax refund forms, shall be retained for three years from the date the return is due or filed, whichever is later.

(c) Information relating to the Tribal business, tribal fuel purchases, sales, regulation or taxation is confidential, privileged and exempt from public disclosure. Any request to disclose such information must be approved by Tribal Council prior to disclosure.

6.2 Annual Report

The Finance Department shall submit a report to Tribal Council each year. The report shall summarize and describe the total gallons of fuel purchased and sold in the preceding year, the total State fuel tax refund received by the Tribe, and the transportation-related purposes to which the State tax refund was allocated and the essential governmental functions for which the federal tax-exempt fuel was used.

6.3 Annual Audit

The Tribe shall retain a third-party, independent auditor to conduct an annual audit of the Tribe's compliance with this Act and the Agreement. This audit will be coordinated by the Finance Department, who will provide, and is hereby authorized to provide, the auditor with the necessary information to conduct the audit.

(i) The auditor shall review records necessary to certify the following:

- the number of gallons purchased for resale by the Tribal business;
- the amount of State fuel tax included in the price of fuel purchased by the Tribe;

- that the state fuel tax refund, or any portion thereof, spent during the fiscal year was spent on transportation-related purposes; and
- that the fuel for which the Tribe sought and obtained a federal fuel tax refund was used exclusively for essential governmental functions.

(ii) The Tribe shall deliver a copy of the final written audit report to the Director of the State Department of Licensing each year at such time as may be requested by the State.

SECTION 7.0 – COMMUNICATION WITH THE DEPARTMENT OF LICENSING

The Tribe and Finance Department are authorized to communicate with the State Department of Licensing. The Tribal business may communicate with the Department of Licensing with approval by the Tribe or Finance Department and any written or electronic communication with Department of Licensing by the Tribal business must copy the Tribe and Finance Department.

SECTION 8.0 – SOVEREIGN IMMUNITY

The Tribe specifically and unequivocally declares its sovereign immunity and does not waive its sovereign immunity, expressly or impliedly under any provision of this Act, and nothing in this Act shall be construed as waiving the sovereign immunity of the Tribe or any of its agencies, departments, officials, agents or employees or as authorizing the Tribal business to waive its or the Tribe's inherent sovereign immunity.

SECTION 9.0 – SEVERABILITY

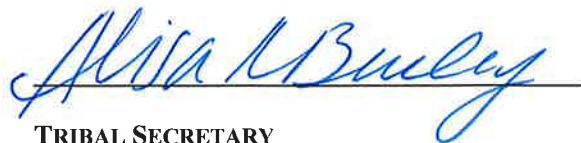
If any section, provision, phrase, addition, word, sentence or amendment of this Act or its application to any person is held invalid by a final judgment of a court of competent jurisdiction, such invalidity shall not affect the other provisions or application of this Act that can be given effect without the invalid provision or application, and to this end the provision of this Act are declared severable.

SECTION 10.0 – EFFECTIVE DATE

This Act shall take effect immediately following approval of its provisions by the Tribal Council and shall supersede and replace any and all prior ordinances of the Tribe relating to the subject matter of this Act.

ENACTED BY THE SNOQUALMIE TRIBAL COUNCIL ON THE 23RD DAY OF JUNE 2017, IN SESSION DULY MET WITH 6 FOR, 0 AGAINST, AND 0 ABSTAINING. RESOLUTION NO. 128 - 2017.

CODIFIED BY THE SECRETARY OF TRIBAL AFFAIRS ON THIS 23RD DAY OF JUNE 2017.


TRIBAL SECRETARY