

CHAPTER XVIII

TAX DIVISION PROCEEDINGS AND TAX CODE ENFORCEMENT.

1801. Tax Division. When proceeding under this Chapter, the Tribal Court shall be termed the Tax Division of the Tribal Court.

1802. Jurisdiction of Tax Division. The Tax Division shall have the following jurisdiction:

- A. Suits brought by the State of Michigan against the Tribe pursuant to the Tax Agreement to:
 - 1. Compel arbitration; or
 - 2. Enforce the terms of an arbitration award.
- B. Suits brought by the State of Michigan against a tribal member or Tribal Entity, located on the Reservation of the Bay Mills Indian Community, pursuant to the Tax Agreement to:
 - 1. Enforce the judgment or order of a Michigan State Court affecting the person or property of such member or Tribal Entity; or
 - 2. Compel the production of books and records, to compel the appearance and/or testimony of an individual, or to undertake an audit.
- C. Suits brought by a tribal member or Tribal Entity against the State of Michigan pursuant to the Tax Agreement to:
 - 1. Review an enforcement action taken by the State without a prior hearing; or
 - 2. Challenge a final tax assessment or denial of refund.
- D. To issue a search warrant for any location within the exterior boundaries of the Reservation of the Bay Mills Indian Community upon a showing by the State or by the Tax Department that it has reasonable cause to believe that tobacco products or motor fuel may be stored at such location, contrary to the provisions of the Tax Agreement.

E. Suits brought by the Tax Department against a tribal member or Tribal Entity located on Tribal and Trust Lands to:

1. Collect taxes, interest, and penalties owed the Tribe under the Tax Code;
2. Reimburse the Tribe for any payments made to the State caused by the incorrect issuance of a Certificate of Exemption to the member or Tribal Entity;
3. Compel production of books and records, to compel the appearance or testimony of an individual, or to undertake an audit;
4. Prohibit the continuation of Sale at Retail activity in the absence of a Retail License;
5. Enforcement proceeding alleging a violation of the Tax Code.

F. Suits brought by the Tax Department against a tribal member or Tribal Entity for reimbursement to the Tribe for payments made to the State caused by the incorrect issuance of a Certificate of Exemption to the Resident Tribal Member or Tribal Entity.

G. Appeals of Tax Department determinations of tax deficiencies and/or denials of requests for refunds.

1803. **Procedure for Arbitration Action against the Tribe.** The State shall file a written petition for an order compelling arbitration against the Tribe, specifying that all prerequisites to the initiation of arbitration under the Tax Agreement have been met, and that the Tribe has failed to agree to such arbitration. Upon such showing, the Tax Division shall issue an order compelling the Tribe to participate in arbitration, as provided in the Tax Agreement, within 14 business days of the date of filing the action. Failure to issue this order within the time period specified shall cause the case to be moot, and the State may seek its remedy in another forum.

1804. **Procedure for Enforcement of Arbitration Award against the Tribe.** The State shall file a written petition for enforcement of an arbitration award with the Tax Division, together with a certified copy of such award. Upon such showing, the Tax Division shall issue an order compelling the Tribe to pay the amount specified in the award, within 14 business days of the date of filing the action. Failure to issue this order within the time period specified shall cause the case to be moot, and the State may seek its remedies in another forum.

1805. **Enforcement of State Court Order.** Upon the filing of a petition by the State, the Tax Division shall enforce the provisions of a Michigan State Court order or judgment against the person or property of a tribal member or Tribal Entity found on Tribal and Trust Lands, provided that the standards contained in Tribal Court Rule 104.1 and in Michigan Court Rule 2.615 are met. The Tax Division shall issue a written decision on the petition within 14 business days of the date on which the petition is filed. An order of the Tax Division to enforce the State Court judgment or order shall be enforced by tribal law enforcement officers, if requested by the State.

1806. **Orders to Compel Production; Submit to Audit.** Upon a showing by the State that a tribal member or Tribal Entity has failed or refused to comply with a request to produce books and records, or to appear or give testimony, or to participate in an audit, the Tax Division may issue an order requiring compliance with the requested action. Such order shall be issued as follows:

A. **Hearing.** The Tax Division shall conduct a hearing on the State's petition for such order within 10 business days of the date the Taxpayer is served by the State.

B. **Court Findings.** The Tax Division shall grant the State's petition and order Taxpayer compliance when the evidence demonstrates that:

1. The Taxpayer is a tribal member or Tribal Entity;
2. The Taxpayer and/or property is located on the Reservation of the Bay Mills Indian Community;
3. The State's request to the Taxpayer relates to one or more of the taxes subject to the Tax Agreement; and
4. The State's request to the Taxpayer is consistent with relevant Michigan law and the provisions of the Tax Agreement.

C. **Order Issuance.** The Tax Division shall issue its decision and order within 14 business days of the date of service of the petition on the Taxpayer.

D. **Taxpayer Failure to Comply with Tax Division Order.** In the event that the tribal member or Tribal Entity shall fail or refuse to comply with an order of the Tax Division issued under subsec.(C), the order shall be enforced by tribal law enforcement officers with the assistance of State law enforcement officers.

1807. **Petition for Hearing after Enforcement Action.** In the event that property of a tribal member or Tribal Entity, which is located on the Reservation of the Bay Mills Indian Community is inspected or seized jointly by tribal and State law enforcement officers without any order or hearing in the Tax Division, the member or Tribal Entity may seek review of such action by the Tax Division by filing a petition within seven (7) days of the action's occurrence. The Tax Division shall conduct a hearing and issue its decision within 14 business days of the filing of the petition, and shall affirm the action when:

- A. The Taxpayer is a tribal member or Tribal Entity;
- B. The Taxpayer and/or property is located on the Reservation of the Bay Mills Indian Community;
- C. The action taken pertains to one or more of the taxes subject to the Tax Agreement; and
- D. The action is in compliance with relevant Michigan law and the provisions of the Tax Agreement.

1808. **Member or Tribal Entity Appeal of Final Tax Determination by State.** A tribal member or Tribal Entity may appeal a final tax assessment or denial of tax refund by the State within 35 days of the issuance of the State's decision without prepayment of the contested portion of the tax, penalty or interest; provided that the appeal alleges all of the following:

- A. The member resides, and the Tribal Entity resides and does business wholly, within the Reservation of the Bay Mills Indian Community;
- B. The tax at issue is imposed on income, business activity, transactions or privileges which were realized, occurred, or exercised wholly within the Reservation; and
- C. The appeal is based on one of the following grounds:
 - 1. The State's decision is unlawful under Michigan law, as may be modified by the Tax Agreement; or
 - 2. The State's decision is unlawful under the Michigan Constitution, the United States Constitution, or federal law, but excluding federal Indian law as the sole basis of the appeal.

D. The Tax Division shall rule within one (1) year of the date on which the appeal was filed.

E. The Tax Division shall apply Michigan law relative to practices and procedures of a case in the Michigan Court of Claims.

1809. **Collection Actions by Tax Department.** An action filed by the Tax Department to collect a tax, interest and penalty owed by a tribal member or Tribal Entity under the provisions of the Tax Code shall be adjudicated under the general provisions of this Code.

1810. **Reimbursement Actions by Tribe.** An action for reimbursement may be filed by the Tax Department against a tribal member or Tribal Entity under the following circumstances:

A. The defendant was issued a Certificate of Exemption from payment of Michigan sales tax by the Tribe; and

B. The defendant was thereafter determined by the State to be ineligible for such exemption; and

C. The Tribe was required under the Tax Agreement to pay the State the amount of tax owed on that purchase.

1811. **Tax Department Action to Compel Compliance with Tax Investigation.** An action may be filed by the Tax Department against a tribal member or Tribal Entity requesting the issuance of an order requiring compliance for failure or refusal to comply with a Tax Department request to produce books and records or to participate in an audit. The Tax Division shall conduct a hearing and issue its decision within the time periods specified in Section 1806(A) and (C) of this Chapter. Failure or refusal to comply with an order of the Tax Division shall cause enforcement of its terms by the Tribe's law enforcement officers.

1812. **Violation of Retail License Requirements.**

A. **Cease and Desist.** An action for injunctive relief may be filed by the Tax Department against a tribal member or Tribal Entity who engages in sales activities without a current Retail License in violation of Section 905 of the Tax Code. The Tax Division shall immediately issue an order to show cause to respondent, which shall be personally served. A hearing shall be conducted not more than five (5) business days from the date of issuance of the show cause order. Respondent's failure to appear shall not preclude the

Court from granting the requested relief. Upon a showing at such hearing that the respondent is engaged in sales activities and is not currently licensed by the Tax Department, the Court shall issue an order compelling respondent to cease and desist such activities until such time as respondent obtains a Retail License. Such order must be personally served. Respondent's failure or refusal to comply with the cease and desist order shall constitute contempt of court, punishable under Section 639 of this Code, and/or by forfeiture under Section 1812(B) of this Chapter.

B. Forfeiture. In addition to such other penalties contained in this Code, the Court may declare forfeited to the Tribe any tangible personal property offered for sale by respondent. Such forfeiture shall only be effected upon a petition for forfeiture filed by the Tax Department, identifying the property and its location. An order to show cause and order to seize the identified property shall immediately issue, together with a notice of hearing on the petition to be held not more than five (5) business days after the order to show cause is signed. At the hearing, respondent shall forfeit the property unless a current Retail License is presented to the Court.

1813. **Appeal of Tax Department Decision.** A tribal member or Tribal Entity may appeal a final decision of the Tax Department that a tax deficiency is owed under Section 1006 of the Tax Code, and a determination by the Tax Department that a refund is not due under Section 1009 of the Tax Code; provided that such appeal is filed with the Tax Division not more than 30 days after receipt of the decision. A hearing shall be conducted, which shall be limited to the following issues:

A. The Tax Department decision is in violation of the Tax Code;

B. The Tax Department decision is in violation of other laws of the Bay Mills Indian Community.

The decision of the Tax Division shall be final, and not subject to appeal under Chapter II of this Code.

1814. **Seizure of Motor Fuel; Tobacco Products.** Upon the filing of an affidavit from the Tax Department that there is probable cause that a tribal member or Tribal Entity is in possession on the Reservation of the Bay Mills Indian Community of tobacco products or motor fuels in violation of the Tax Agreement, the Tax Division shall issue an order of seizure of such property, and further require that such property shall be transferred to the State for disposition, in the event that it is possessed in violation of the Tax Agreement. An appeal of the seizure order may be made under the

procedure provided in Section 1807 of this Chapter.

1815. **Penalties for Violation.** In addition to the penalties provided by this Chapter, a violation of any provision of the Tax Code may cause an action to be filed in the Tribal Court pursuant to Chapter XI of the Tax Code on behalf of the Bay Mills Indian Community, as represented by the Tribal Prosecutor, against any person alleged to have committed a violation. Upon the finding by the Tribal Court that a violation has occurred, the following penalties may be imposed:

A. Imprisonment of not more than one (1) year, a fine of not more than \$5,000.00, or both;

B. If the violator is non-Indian, a civil remedial forfeiture of not more than \$5,000;

C. Forfeiture of any tobacco product or motor fuel acquired and possessed or stored on the Reservation of the Bay Mills Indian Community in violation of the Tax Agreement;

D. Forfeiture of any tangible personal property offered for sale after suspension or termination of a Retail License.