

ORDINANCE 86-01

**SAN CARLOS APACHE TRIBE
TAX CODE**

Section 1 Character of Tax.

The taxes and fees imposed by this Ordinance shall be in addition to all rent, royalties or other fees, licenses and taxes levied by law, whether as a condition precedent to engaging in any business taxable under this Ordinance or for any other purpose.

Section 2 Definitions.

In this Ordinance, unless the context otherwise requires:

1. “Business” includes all services, activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit, or advantage, either directly or indirectly,
2. “Department” shall mean the San Carlos Apache Finance Department.
3. “Engaging”, when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.
4. “Gross income” means the gross receipts of a taxpayer derived from any activity, trade, business, commerce or sales, or the value proceeding or accruing, from the sale of tangible personal property, or services, or both, and without any deduction on account of losses.
5. “Gross income” shall not be construed to include goods, wares, or merchandise, or value thereof, returned by customers when the sale price is refunded either in cash or by credit, nor the sale of any article accepted as part payment on any new article sold, if and when the full sale price of the new article is included in the gross income or gross proceeds of sales, as the case may be.
6. “Gross receipts” means the total amount of the sale, lease, or rental price, as the case may be, of goods or services, including all receipts, cash, credits, and property of every kind or nature, and any amount for which credit is allowed by the Seller to the Purchaser without any deduction therefrom on account of the costs of the property sold, material used, labor or services performed, interest paid, losses or any other expense, but does not include cash discounts allowed and taken nor the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit.
7. “Person” includes an individual, firm, partnership, joint venturer, association, corporation, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number.
8. “Sale” means any transfer of title or possession, or both, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by means whatever, for a consideration.
9. “Taxpayer” means any person liable for any tax imposed by this Ordinance.

Section 3 Administration and Enforcement.

The administration of this Ordinance shall be exercised by the Finance Department, and all payments required by this Ordinance shall be made to the Department.

Section 4 Privilege Licenses.

A. Every person who receives gross income upon which a tax is imposed by this Ordinance, desiring to engage or continue in business, shall make application to the Department for a Privilege License accompanied by a fee of \$100.00. Such license shall be effective for the period stated therein. Such person shall not engage or continue in business until he has obtained or renewed a Privilege License.

B. The Privilege License shall not be transferable upon a change of ownership or change of location of the business.

C. When the ownership or location of the business upon which a tax is imposed by this Ordinance has been changed within the meaning of Sub-Section B of this Section, the Licensee shall surrender the License to the Department.

D. The person engaged in or conducting a business in two or more locations shall procure a license for each location.

Section 5 Levy of Tax

There is levied and there shall be collected by the Department for the purpose of raising public money to be used in liquidating the outstanding obligations of the San Carlos Apache Tribe, to aid in deferring the necessary and ordinary expenses of the Tribe, and to raise revenue for expenditure for the general health, education, and welfare of individuals on the San Carlos Apache Reservation, a Tax measured by the gross income of business transacted within the exterior boundaries of the San Carlos Apache Reservation by persons on account of their business activities, and in the amounts determined by application of the rates against gross income, in accordance with the schedule set forth in Section 6.

Section 6 Tax Rate.

The tax imposed by Section 5 shall be levied and collected at an amount equal to two and one-half percent (2 ½%) of the gross income from the business upon every person engaging or continuing in business within the exterior boundaries of the San Carlos Apache Reservation.

Section 7 Partnerships.

All taxes levied under this Ordinance upon the business activities of a partnership shall be a liability and charge against each and all of the partners. Licenses issued to persons engaged in business as partners shall be in the name of the partnership.

Section 8 Monthly Return; Time for Payment.

A. Except as otherwise provided below, taxes levied under this Ordinance shall be due and payable monthly on or before the 1st day of the second month next succeeding the month in which the tax accrues, and shall be delinquent five days thereafter.

B. The Department may, for any taxpayer whose estimated annual liability for taxes imposed by this Ordinance is between \$200 and \$500, authorize such taxpayer to pay such taxes on a quarterly basis. The Department, may for any taxpayer whose estimated annual liability for taxes imposed by this Ordinance is \$200 or less, authorize such taxpayer to pay such tax on an annual basis.

C. If, due to the large amount of gross income anticipated from a business or the short period of time in which a business will be conducted on the Reservation, the Department finds that it is in the best interests of the Tribe to have any tax paid monthly in advance, the Department shall so notify the taxpayer in writing. In such event, on or before the first day of each month of business activity, the taxpayer shall prepare and file its return and pay tax based on estimated future gross income for the succeeding month. Thereafter, on or before the first day of the second month next succeeding the month in which the tax accrues, the taxpayer shall file a return reflecting its actual gross income. If the estimated tax paid exceeds the actual tax incurred, a credit shall be allowed by the Department for the following month. If the estimated tax paid is less than the actual tax incurred, the taxpayers shall pay the balance when filing its return reflecting its actual gross income.

D. The taxpayer shall prepare a return to the Department showing the amount of the tax for which he is liable, and shall on or before the day on which the taxpayer's tax payments are due and payable, mail or deliver the return together with a payment for the amount of the tax to the Department. The return shall be verified by the oath of the taxpayer or an authorized agent as accurate.

E. Any taxpayer who fails to pay such tax within five days from the date upon which payment becomes due shall be subject to and shall pay a penalty of ten percent (10%) of the amount of the tax, plus interest at the rate of five percent (5%) above the then current prime rate charged by The Valley National Bank of Arizona, Phoenix, Arizona, as it may change from time to time.

F. The returns required under this Ordinance shall be made upon forms prescribed by the Department.

G. The Department, for good cause, may extend the time for making any return required by this Ordinance, but the time for filing the returns shall not be extended beyond the first day of the third month next succeeding the regular due date of the return. No such extension shall exempt the taxpayer from any applicable penalty or interest.

Section 9 Method of Payment.

All payments of taxes imposed by this Ordinance, shall be made by check, bank draft, Cashier's Check, money order, or money to the Department, which shall issue a receipts therefor to the taxpayers, but no remittance other than cash shall be final discharge of liability for the tax

levied.

Section 10 Refunds of Excess Payments.

If, upon examination of a monthly return made under this article, it appears that an amount of tax has been paid in excess of this tax lawfully due, then the excess amount shall be credited against any tax then due from such taxpayer under any other return.

Section 11 Deficiencies, Penalty.

A. If the Department is not satisfied with the return and payment of the amount of the tax required by this Ordinance to be paid, it may examine the return and compute the amount required to be paid, based upon the facts contained in the return or upon information within its possession. All amounts determined to be due shall bear interest from the date such amounts were first due at the rate of five percent (5%) above the then current prime rate as charged by The Valley National Bank of Arizona, Phoenix, Arizona, as it may change from time to time.

B. The Department shall give to the taxpayer written notice of its determination of a deficiency by mail.

Section 12 Presumptions.

For purposes of proper administration of the Ordinance and to prevent evasion of tax imposed by this Ordinance it shall be presumed that all gross income is subject to the tax until the contrary is established.

Section 13 Taxpayer's Records

Every person engaging or continuing to engage, within the exterior boundaries of the San Carlos Apache Reservation, in any business for which a tax is imposed by this Ordinance shall keep and preserve appropriate records for the gross income, gross receipts, and such other books or accounts necessary to determine the tax for which the taxpayer is liable, and shall keep and preserve for a period of five years all invoices of goods and merchandise purchased for resale. Such books, invoices or other records shall be open for examination in San Carlos, Arizona at any reasonable time by the Department or its authorized agent.

Section 14 Liability for Tax, Remedies for Collection.

Every tax imposed by this Ordinance and all increases, interest and penalties thereon shall become, from the time they are due and payable, a personal debt of the taxpayer to the San Carlos Apache Tribe, and may be collected by action in the San Carlos Apache Tribal Court instituted in the name of the San Carlos Apache Tribe, in addition to existing remedies, but no such collection action by the Tribe shall be deemed or construed to waive the sovereign immunity of the Tribe from suit.

Section 15 Failure to File Return, Notice.

A. If any person required to file a return fails or refuses to do so, the Department shall proceed to obtain facts and information on which to base the tax prescribed herein, and for such purpose the Department or its agent may examine the books, records, and papers of such person, and may take evidence on oath or otherwise of any person whom it believes is in possession of facts or information pertinent to the inquiry.

B. After the Department makes a determination as to a person's tax liability, the Department shall notify such person in writing, and such tax liability shall accrue interest according to Section 11 A. above.

Section 16 Defaulting Taxpayer, Continuing in Business.

Any person against whom a tax is levied under this Ordinance may be barred by the Department from engaging or continuing in any business until such person has complied with this Ordinance.

Section 17 Failure to Pay, Personal Liability.

Any individual who, on behalf of a taxpayer, is required to collect, truthfully account for, and pay over any tax imposed by this Ordinance who willfully fails to collect such tax, or truthfully, account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. "Individual" as used herein includes an officer or employee of a corporation, or a member or employee of a partnership or joint venture, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

Section 18 Appeal to the Department.

A. Any person from whom an amount is determined to be due under this Ordinance may, after first paying all taxes, penalties, and interest then due, apply to the Department by a Petition in writing within thirty (30) days after the tax is due and payable or determined by the Department to be due under Sections 11 A or 15 A above, or within such additional time as maybe allowed in writing by the Department, for a hearing, correction, or redetermination of the action taken by the Department. The Petition shall set forth the reasons why such hearing, correction, or redetermination shall be granted and the amount in which the tax shall be reduced. The Department shall promptly consider the Petition and shall grant a hearing, if requested.

B. If a Petition is not filed within such period, the amount determined to be due shall become final at the expiration thereof, and such person shall be deemed to have waived and abandoned the right to question the amount determined to be due.

C. The orders or decisions made upon filing Petition for a Hearing, correction, or redetermination shall become final five (5) days after written notice thereof has been mailed to or

received by the Petitioner, whichever first occurs, unless the Petitioner appeals the order or decision to the San Carlos Apache Court.

Section 19 Appeal to the San Carlos Apache Court.

A. Any person aggrieved by decision or order of the Department pursuant to Section 18 may appeal to the San Carlos Apache Court by filing a notice of appeal in writing within thirty (30) days after receipt of the decision or order appealed from. The right to appeal is expressly conditioned on exhausting all administrative remedies and on the taxpayer first paying all taxes, penalties, and interest then due. The San Carlos Apache Court shall take testimony and examine documentary evidence as necessary to determine the appeal.

B. Upon determining the appeal, the Court shall issue a decision consistent therewith. Any additional tax due, if any, shall be paid within thirty (30) days after the Court's decision and thereafter shall accrue interest at the same rate set forth in Section 11A.

Section 20 Notices.

Notices are required or authorized by this Ordinance to be given by mail to a taxpayer shall be addressed to the last known address of the taxpayer, or to such address as may appear in the records of the Department, and shall be sent by regular first class mail with return receipt requested. For purposes of this Ordinance notice shall be presumed to be received upon the date shown by an executed return receipt, or, if such receipt is not executed, then upon the date such notice was attempted to be delivered. It shall be the duty of the taxpayer to maintain a current mailing address with the Department.

Section 21 Lien.

If any tax, interest, or penalty which the Department is required to collect is not paid by a taxpayer when due, such unpaid amounts constitute a lien from the date such amounts came due upon all property and rights to property, whether real or personal, belonging to the taxpayer or thereafter required by him.

Section 22 Perfection of Lien.

A. The lien imposed by the above Section may be perfected by the Department against the taxpayer's real property located in any County by recording a Notice of Lien in the form prescribed by Section D below in the office of the County Recorder and in the Department.

B. The lien imposed by the above Section may be perfected by the Department against the taxpayer's personal property or rights to personal property by recording a Notice of Lien in the form prescribed by Section D below in the office of the Secretary of State and in the Department.

C. From the time of perfecting the lien in the manner provided by this Section, the lien, with accruing interest, is superior to all of the liens and encumbrances perfected thereafter.

D. A Notice of Lien recorded shall specify the nature of the tax, the amount of the tax, interest and penalty due, the taxable periods for which amounts are due and the name and last known address of the taxpayer.

Section 23 Release of Lien

_____The Department may, at any time, release all or any portion of the property subject to the lien from the lien or subordinate the lien to other liens if it determines that the taxes are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of such taxes. If any lien has been satisfied and a Notice of Lien has been recorded by the Department, the Department shall issue a release of the lien to the person against whom the lien was claimed. The Department shall record the lien release in any office where the original lien was recorded.

Section 24 Levy and Dstraint.

A. If a person liable to pay any tax, interest or penalty neglects or refuses to pay, the Department shall collect such tax, and such other sums as are sufficient to cover the expenses of the levy, by levy upon all property and rights to property belonging to the person on or which there is a lien as provided in this Ordinance for the payment of the tax. Levy may be made upon the accrued salary or wages of any taxpayer/

B. As used herein, "levy" includes the power of dstraint and seizure by any means. In any case in which the Department may levy upon property or rights to property, it may seize and sell such property rights to property, whether real or personal, tangible or intangible.

Section 25 Surrender of Property Subject to Levy.

A. Any person in possession of, or obligated with respect to property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Department, surrender such property or rights to property or discharge such obligation to the Department.

B. A person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Department, is liable in his own person and estate to the San Carlos Apache Tribe in a sum equal to the value of the property rights to property not so surrendered, but not exceed the amount of taxes for the collection of such levy has been made, with costs and interest on such sum as provided in this Ordinance. Any amount, other than costs, recovered under this Section shall be credited against the tax liability for the collection of which the levy was made.

C. A person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made who, upon demand by the Department, surrenders the property or rights to property, or discharges the obligation, to the Department is discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from the surrender or payment.

Section 26 Notice and Sale of Seized Property

A. A Notice of Sale and sale of property seized by the Department under this Ordinance shall be conducted in the manner and time provided for in the Rules and Regulations of the Finance Department as approved by the San Carlos Apache Tribe, relating to the sale of property under execution.

B. The Department shall notify the taxpayer of the date, time, and location of the sale of his property or rights to property with a description of the property or right to property to be sold. The notice shall be given in person, left at the dwelling or usual place of business of such taxpayer or shall be sent by First Class Mail to such taxpayer's last known address, not less than ten (10) days before the day of sale.

Section 27 Insufficient Funds Payment.

Any person who shall attempt to pay any taxes, interest or penalties imposed by this Ordinance, with counterfeit money, with an insufficient funds check or check that is otherwise returned, or who stops payment on a check prior to clearing, shall, in addition to any other taxes, penalties, interest imposed hereunder, pay to the San Carlos Apache Tribe an amount equal to fifty percent (50%) of the principal tax then due and owing.

Section 28 Exemptions.

The following persons shall be exempt from payment of tax or other monies imposed by this Ordinance:

A. National banks, national savings and loan associations, and federal credit unions leasing land from the San Carlos Apache Tribe and currently under license therefor;

B. Medical and health care professionals under current license from the San Carlos Apache Tribe;

C. Mineral exploration entities whose primary function while on the San Carlos Apache Reservation is the exploration or development of minerals or gemstones under a current Mineral Prospecting Permit or any other agreement entered into between the Tribe and such person pursuant to such permit.

D. Any Business operated exclusively by a Reservation Governmental District namely: Bylas District, Gilson Wash District, Peridot District and Seven- Mile District

E. Any business operated exclusively by a non-profit corporation, partnership or association. The Department shall have the sole and final authority to determine the non-profit character of a Business.

F. Any Business except livestock, operated by enrolled members of the San Carlos Apache Tribe or their spouses, provided, however, that this exemption from tax shall apply only to the first \$10,000 of gross income received in any calendar year.

Section 29 Severability.

Should any provision of the foregoing Ordinance be found invalid by a Court of competent jurisdiction, the remaining portions of this Ordinance shall remain in full force and effect; provided, however, that no taxes, penalties, interest or other monies paid under any provision found invalid shall be refunded except monies paid by the person who prevails in having such provision ruled invalid.

Section 30 Award of Court Costs.

A. In the case of any civil proceeding which is brought by the San Carlos Apache Tribe in connection with the determination, collection, or refund of any tax, interest, or penalty under this Ordinance, the prevailing party may be awarded a judgement for reasonable litigation costs incurred in such proceeding.

B. The amount of reasonable litigation costs which may be awarded under Sub-Section (A) with respect to any prevailing party in any civil proceeding shall not exceed \$3,000.

C. A judgement for reasonable litigation costs shall not be awarded under Sub-Section (A) unless the Court determines that the prevailing party had first exhausted the administrative remedies available to such party as provided in this Ordinance.

D. The term “reasonable litigation costs” includes reasonable Court costs, expenses of expert witnesses, and reasonable Attorney’s fees paid or incurred in connection with the civil proceeding.

E. The term “prevailing party” means any party to any proceeding described above which establishes that the position of the San Carlos Apache Tribe in the civil proceeding was unreasonable, and has substantially prevailed with respect to the amount and controversy, or has substantially prevailed with respect to the most significant issue or sets of issues presented. Any determination as to whether a party is a prevailing party shall be made by the San Carlos Apache Tribal Court or by agreement of the parties/

Section 31 Jurisdiction.

Any person directly or indirectly engaging in business on the Reservation shall be deemed to have consented to the jurisdiction of the San Carlos Apache Court for all purposes connected with enforcement of this Ordinance.