

CHAPTER 57

STOCKBRIDGE-MUNSEE TRIBAL LAW CONSTRUCTION SALES TAX ORDINANCE

Section 57.1. Tax Imposed

There is imposed upon contractors exercising the privilege of engaging in the business of construction of buildings, warehouses, industrial plants, commercial facilities, residences and vacant land improvements or development upon lands of the Stockbridge-Munsee Community, a tax equal to four and one-half percent (4.5%) of the purchase price of labor and materials purchased for use in said construction. The responsibility for payment of this tax is upon the person or firm engaged in the business of construction, including general contractors, sub-contractors, whether in corporate, joint venture, general or limited partnership, or sole proprietorship form, and any owner thereof:

Section 57.2 Definitions

(A) Lands of the Stockbridge-Munsee Community shall include any real property held in trust by the United States of America for the Stockbridge-Munsee Community, whether subject to any tribal member's right of occupancy or assignment or not.

(B) Construction shall include the erection or construction of any buildings or improvements, utility installations, roads, facilities, and site preparation, and of a purchase price of One Hundred Thousand Dollars (\$100,000.00) or more. The purchase price shall be calculated to include architect and engineering fees, construction inspections and testing, site work, roads, utility installations, security services, and acquisition costs.

(C) For purposes of this ordinance, construction shall include all units or phases of construction that are considered as a single project or are funded or financed as a single project for completion within a two-year period after construction or site preparation is commenced. Commencement of construction shall not include architect or engineering services, inspection services, testing services, security services, or acquisition proceedings. Construction shall not include rehabilitation of existing privately or publicly owned housing.

(D) The owner of any construction shall include any person, firm, governmental entity, corporation, general or limited partnership, joint venture, or sole proprietorship having or acquiring a legal, beneficial or leasehold title to the real property upon completion of construction or within two years after completion, or receiving the right to occupy improvements subject to this ordinance within two years following completion of the construction.

Section 57.3 Collection

(A) The Tribal Treasurer's office is authorized to administer this ordinance.

(B) Any contractor engaged in construction subject to this ordinance shall submit the invoices or copies thereof for labor and materials incident to construction to the tribal treasurer's office within 15 days after submitting any request for payment to any owner or owner's agent or within 15 days following completion of construction. The treasurer's office shall determine the applicability and amount of the tax imposed by this ordinance.

(C) The tax imposed by this ordinance shall be paid by the person or firm engaged in construction or requesting such payment to the tribal treasurer's office, except that payment on behalf of the person or firm may be made by or accepted from the owner of the construction.

(D) The tribal treasurer's office is authorized to investigate and determine the liability of any construction for the payment of the tax imposed by this ordinance. The office may retain the services of attorneys and other persons necessary to the investigation and collection of taxes imposed by this ordinance.

(E) If the tax is not paid within 30 days following payment pursuant to request or completion of construction, whichever event occurs first, the tribal treasurer shall determine the applicability and amount of the tax imposed, and shall communicate said determination by certified mail, return receipt requested, together with a copy of Sections 57.4 and 57.5 of this ordinance to the contractor and owner.

Section 57.4 Tax Lien Enforcement

If the taxes imposed by this ordinance are not paid within 30 days following any payment for construction, labor, or materials by an owner or within 30 days for following a final determination of the a contractor's tax liability, the amount of the tax shall become a lien on the improvements and real property improved by said construction and shall bear interest at the rate of twelve percent (12%) per annum from the date of each payment or completion. The lien may be enforced in the name of the Stockbridge-Munsee Community by an action in a court of competent jurisdiction for the amount of the tax and interest, together with costs of collection and attorney fees and a penalty assessment against the contractor in the amount of twenty percent (20%) of the tax to be collected; provided, that upon application to the Tax Administration Board and upon a showing of good cause other than negligence, the penalty alone may be waived.

Section 57.5 Dispute Resolution

(A) There is established by this ordinance a Tax Administration Board consisting of three persons appointed by the Stockbridge-Munsee Tribal Council for staggered three year terms. Members of the Tax Administration Board shall be adult tribal members and shall receive per diem compensation for the exercise of their duties. The Tax Administration Board shall hear and determine disputes concerning the imposition or calculation of taxes imposed by this or any other tribal tax ordinance.

(B) Within no more than 30 days following the date of a determination by the tribal treasurer, a person aggrieved by a determination of the tribal treasurer may commence proceedings for review by filing a written protest, stating the grounds for protest, in the office of the tribal treasurer. Thereafter, the board shall review records and hold hearings as it deems necessary, and shall make a written decision of the validity of the treasurer's determination. The filing of a written protest shall have the effect of avoiding any penalty assessment if the tax is fully paid within thirty days following a final determination.

(C) The Tribal Council may review the Board's decision only for determining compliance with the applicable ordinance, and may vacate the Board's decision or remand the dispute for further proceedings. An action for review may be commenced by a person aggrieved by the decision of the Tax Administration Board by filing a petition for review with the tribal secretary within 30 calendar days following the date of the Tax Administration Board decision, stating the grounds for review.

(D) If no proceeding for pretest or review is filed within the time provided, the matter shall be deemed as finally determined and enforceable pursuant to Section 57.4.

Section 57.6 Disposition

Taxes collected pursuant to this ordinance shall be deposited to the tribal general fund, which shall also pay the costs necessary for enforcement and collection.

Section 57.7 Set-offs

If any contractor or owner is entitled to payment of money from the tribe and taxes imposed by this or any other ordinance remain unpaid, the tribe shall have the authority to collect and offset the tax obligations from the funds owed to the tax obligor. The tribe shall notify the contractor by certified mail, return receipt requested, of its intent to set off tax obligations, whereupon the contractor may file a protest pursuant to Section 57.5. The filing of a protest shall not have the effect of preventing the collection of the tax.

LEGISLATIVE HISTORY

Construction Tax Ordinance was adopted by the Tribal Council by Resolution No. 1208, dated May 30, 1990.

The BIA has no record of receiving this ordinance in their file as of their 1993 listing.