

NHBP TRIBAL-STATE TAX AGREEMENT

Tribal Member Guide to Obtaining Exemptions

What Are My Rights? What Do I Do?

Tribal-State Tax Agreement

- Tax Agreement negotiated jointly by representatives of all Tribes and the State between 2000 and 2002.
- Tribes (including NHBP) and State agreed on terms on December 20, 2002
- NHBP and State agreed to implementation date of July 1, 2007

Why Have a Tax Agreement

- Many issues re: when the State can impose taxes on the Tribe, Tribal Members, Tribal businesses, or non-Indian companies/businesses that do business on Reservations has been heavily litigated:
 - Can the state impose its sales tax on non-Indian companies that sell goods to the Tribe or Tribal members?
 - Can the state tax the business activities of Tribal/member-owned businesses that sell goods/services off-reservation?
 - Can the state tax non-Indian owned businesses that operate on trust lands?
- In general, exemption from state taxes only applies to Tribal activities or Tribal members on Reservation/trust lands.
- For example, all of the cases that have been litigated in federal/state courts have only exempted Tribal members who both live and work on Reservation/trust lands from state income taxes.

Goals of Tribal-State Tax Agreement

- State and Tribes wanted to reach agreement to avoid having to litigate all of these questions.
- After 1 year +/- of negotiations, it became clear that the state was most concerned with Tribes (or members) would open businesses that would sell a lot of goods/services to non-Indians and that the State would be out a lot of revenue.
- State also concerned with Tribes importing tobacco products/motor fuel from out-of-state wholesalers and selling to non-Indians without collection of state tax.
- Most of the Tribes were primarily focused on:
 - Exempting sales to Tribal governments;
 - Exempting sales to Tribal casinos;
 - **Maximizing benefits to Tribal members.**

Agreement Area/Tribal & Trust Land Distinction Created

- An innovation (compromise) that was reached was to separate tax exemptions for commercial activities and tax exemptions for “governmental” and “Tribal Member Personal/Household Use”
- Commercial activities of Tribal businesses or business activities of Tribal member are limited to “trust lands”.
- If the activity was “governmental” (including casino gaming) or personal/household for Tribal Members, the state was willing to extend the tax exemption to an area that was larger than “trust lands” – this larger area was called the Tax Agreement Area.
- The State and Tribes negotiated the geographic area to be included in each Tribe’s Agreement Area.

How Were Agreement Areas Determined?

- Tribal negotiators were trying to negotiate Agreement Areas that included as many Tribal Members' as possible.
- The State was willing to allow Tribes to include areas that were not “trust lands” or outside of Reservations but wanted those areas to be “near” the Tribe’s current trust lands or Reservation.
- The State was also generally unwilling to large urban population areas (i.e. Grand Rapids; Muskegon)

What is NHBP's Agreement Area

- Includes a large part of Calhoun County;
- Includes a few select areas in Branch County.
- See maps.

Resident Tribal Member

- The term “Resident Tribal Members” is the term that defines who is entitled to most of the tax exemptions recognized in the Tax Agreement.
- “Resident Tribal Member” – is someone whose primary residence is a home that is located somewhere inside the Tax Agreement Area.
- A “Resident Tribal Member” is, for certain state tax purposes, treated as living on an Indian Reservation or trust lands.

Requirements for Being Considered A Resident Tribal Member

- The “technical requirements” are critical:
 - You must have your principal residence within the Tax Agreement Area;
 - That address (within the Tax Agreement Area) must be what the Enrollment Office has on file. (NOTE: Check with Enrollment to make sure they have your correct/current address)
 - Your name must be on the list of Resident Tribal Members (NOTE: If you’re not sure on the list, you need to check).
 - Once you are added to List, the Tribe needs to send your name to the Michigan Department of Treasury:
 - You are not recognized as a “Resident Tribal Member” until the 1st day of the month after your name is sent to the State.
 - i.e. If you move into the Agreement Area on January 22nd, but don’t notify the Enrollment Office until March 2nd, your name will probably not be added to the list until March and not sent in to the State until later that month. **You will not be considered a “Resident Tribal Member” until April 1st.**
- NOTE: We do know that there are cases in which people thought they were on the List of Resident Tribal Members. Make sure you check to verify the date you were added to the List of Resident Tribal Members or if you’re on it.

Partial Year Resident Tribal Member

- You need to know how many months out any calendar year you qualified as a “Resident Tribal Member”
- We will have the “official” list from the State for 2009 within 2 weeks.
- Date will determine how much of the Resident Tribal Member’s wages/salary is exempt from Michigan Income Tax: only that portion of the income you earn while you are on the List of Resident Tribal Members is exempt:
 - i.e. April 1 RTM status obtained – you only get to claim exemption on the income earned from April 1 to December 31.

Taxes Important to Tribal Members Covered by the Tax Agreement

- Michigan Income Tax (no exemption from federal income tax);
- Michigan Sales/Use Tax:
 - Sales Tax Credit;
 - Purchase of “goods” from Tribally-owned business (i.e. Trader’s Blanket);
 - Purchase of cars; boats; snowmobile, mobile home;
 - Construction materials used to improve/build your primary residence within the Tax Agreement Area;
 - Electric, natural gas, home heating oil/propane
- Tobacco Products Tax (available to all Tribal Members – not just Resident Tribal Members)
- Motor Fuels Tax (available to all Tribal Members – not just Resident Tribal Members)

Michigan Income Tax Exemption for Resident Tribal Members

- Only that portion that is earned during the time you are on the list of Resident Tribal Members is exempt – i.e. eligible to be refunded.
- Only the Resident Tribal Member income can be exempt – if you file jointly, cannot request refund for taxes owed/paid on your spouses income unless he/she is also an NHBP Resident Tribal Member.
- Limited to wages/salaries; “passive” income (i.e. pension; etc)
- If you own a business and derive income through “profits” or “distributions” (i.e. sole proprietorship; LLC) only that portion of the business income earned from business conducted entirely on NHBP “tribal/trust lands” is exempt. (Example: Construction activities)[NOTE: Can talk to an accountant to see about becoming an employee of your business and paying yourself a “salary/wage”]

Forms Needed to Obtain Refund of Michigan Income Tax

- Need to fill out your MI-1040 tax return (sample form attached): you will add up income on Lines 9 through 11.
- Need to fill out Schedule 1 (sample form attached) – in addition to any other subtractions from income you might be entitled, on Line 20 of Schedule 1, you will insert the amount of the wages/salary or passive income you earned during the time you were a Resident Tribal Member. [NOTE: Again, if you were only a Resident Tribal Member for part of the year, you can only include that portion of the income earned during the months you were on the list of Resident Tribal Members].
- The amount from Line 20 (added to any other deductions you are entitled to take on Schedule 1) is inserted on Line 13 of your MI-1040 and deducted from Taxable Income.
- The amount of your income that is subject to tax is put in Line 14.
- You can still take your exemption allowance from Line 9.h.

Michigan Resident Tribal Member Annual Sales Tax Credit

- The Tax Agreement only allows Resident Tribal Members to avoid paying sales/use taxes when you buy something in limited circumstances (i.e. purchases from Tribally-owned retail stores)
- In a few other cases, you can get a dollar-for-dollar refund of sales/use taxes paid by filing a special form (i.e. new/used cars; boats; snowmobile; mobile home – things that come with a Title)
- In all other cases, you pay the sales tax on things you buy and get a Sales Tax Credit by filing a specific form: TRIBAL 4013.
- NOTE: This is one of the compromises made under the Tax Agreement.
- If you file a joint return, can only get a credit on the Resident Tribal Member's income. NOTE: Even if you are retired/disabled, Lines 8-10 do allow you to add back in the amount of SS, SSI, Veterans disability you may receive.
- Credit Calculation is based on the number of months you qualified as a Resident Tribal Member:
- See example on the Form Attached.

Sales of Electricity, Natural/Artificial Gas, Home Heating Fuels and Transmission/Distribution Charges

- If you are a Resident Tribal Member, you should not be getting charged Michigan sales tax on your bill for the above-services.
- If you are still paying Michigan Sales Tax on these services, send us:
 - Name and address;
 - The name and address on the account (if different);
 - Name of the provider (i.e. Consumers Energy, DTE, SEMCO, propane distributor, etc.)

We will need to get this information to Michigan Treasury and they will contact the provider to direct them to take taxes off your bill.

Telephone, Internet, Cable

- If you live on the Pine Creek Reservation, the Tax Agreement also provides for exemption from sales/use tax on these service.
- Check your bills to see if you are being charged for these.

Sales/Use Tax Refund on Certain Purchases

- Must be a Resident Tribal Member.
- Property covered:
 - Vehicles/boats/snowmobiles “principally garaged, berthed or stored within the Agreement Area”.
 - Modular/mobile home to be used as your principal residence within the Tax Agreement Area.
- Construction Materials – affixed to the Resident Tribal Member’s “principal residence ... located within the Tax Agreement Area.

Form Used to Get Refund of Sales or Use Taxes Paid

- MI Treasury Form TRIBAL 3996 – Resident Tribal Member (RTM) Sales Tax and Use Tax Refund Request (copy attached).
- NOTE: If the vehicle or house to which the refund is sought is jointly titled by a Resident Tribal Member and a non-member spouse, you only get a refund of 50% of the tax.
- Need to keep copies of receipts/contracts: especially for construction materials.
- Documentation needed will vary based on type: review form and language from Tax Agreement.
- Refund requests can be filed in April, July, October and January.

Motor Fuels/Tobacco

- Tobacco Products can only be purchased at FireKeepers Casino (Trader's Blanket) as of this time.
- Motor Fuels can be purchased at:
 - PS Mart on M-60 in Union City
 - PS Mart/CITGO on 11-Mile/Michigan (near FireKeepers)
- **Cannot purchase either one without presenting Tribal ID card.**
- **Your use will be monitored and, if abused (i.e. buying for non-Tribal members) you may be cited and fined. Your privilege of making exempt purchased may also be cut off for up to a year.**