



DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AACC003300/A0H901010.999900.253G]

Chippewa Cree Indians of the Rocky Boy's Reservation; Amendment to Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes an amendment to the Liquor Ordinance of the Chippewa Cree Indians of the Rocky Boy's Indian Reservation of Montana (Chippewa Cree Tribe). The Chippewa Cree Tribe and the State of Montana have agreed to enter into a Montana Alcoholic Beverages Tax Agreement. The purposes of the Agreement are to minimize legal controversy and possible litigation over the taxation of alcoholic beverages within the exterior boundaries of the Rocky Boy's Reservation to mitigate the effects of dual taxation on the sale of alcoholic beverages by both the Tribe and the State, and to provide an effective means by which revenues generated by the state and tribal taxes on the sale of alcoholic beverages may be shared and distributed. In order to accomplish these purposes, the State and the Tribe agree that the same level of taxation will be imposed on the sale of alcoholic beverages both within and outside the boundaries of the Reservation. The Agreement requires the Tribe to adopt and keep in force an ordinance imposing taxes equal to Montana liquor excise and license taxes and beer, wine, and hard cider taxes sold within the exterior boundaries of the Rocky Boy's Indian Reservation.

DATES: This ordinance shall take effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Jo-Ellen Cree, Tribal Operations Officer, Rocky Mountain Regional Office, Bureau of Indian Affairs, 2021 Fourth Avenue North, Billings, Montana 59101, Telephone: (406) 247-7964 or (406) 247-7988, Fax: (406) 247-7566;

or Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS-4513-MIB, Washington, DC 20240, Telephone: (202) 513-7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 5886, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior certifies and publishes in the *Federal Register* notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. The Chippewa Cree Tribe adopted Tribal Resolution No. 52-20 on May 7, 2020, and adopted Ordinance No. 01-20, Governing the Taxation of Alcoholic Beverages Sold on within the Rocky Boy's Indian Reservation. This amendment to the liquor control ordinance is incorporated and codified by Ordinance No. 01-20 within Title XVII, Chapter 7, of the Chippewa Cree Tribal Law and Order Code and codified within Chapter 6 of the Chippewa Cree Law and Order Code Alcoholic Beverage Control Ordinance.

This notice is published in accordance with the delegated authority by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Chippewa Cree Business Committee duly adopted the amendment to the Chippewa Cree Tribe Liquor Control Ordinance by Tribal Resolution No. 52-20 on May 7, 2020.

The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation Liquor Ordinance, Chapter 6 reads as follows:

“Taxation of Alcoholic Beverages, Ordinance No. 01-20, Liquor Excise and Licenses, Beer, Wine, and Hard Cider”

Sec. 101. Declaration of Policy.

1. This Ordinance is enacted pursuant to the inherent governing power of the Chippewa Cree Tribe and under authority recognized by federal law in accordance with provisions of the Constitution and Bylaws of the Tribe. All persons, business, lands, transactions, and activities either relocated on or occurring within the exterior

boundaries of the Rocky Boy's Indian Reservation shall be subject to provisions of this Ordinance.

2. This Ordinance is enacted for the protection of the health and safety, and to promote the general welfare of the people residing within the exterior boundaries of the Rocky Boy's Indian Reservation. All its provisions shall be liberally construed for the accomplishment of that purpose.
3. The Chippewa Cree Business Committee believes that enactment of this Ordinance governing alcoholic beverages through taxation within the exterior boundaries of the Rocky Boy's Indian Reservation will help provide revenue for the continued operation of Tribal government.
4. This Ordinance shall impose taxes equal to the Montana liquor excise and license taxes and beer, wine, and hard cider taxes sold within the exterior boundaries of the Rocky Boy's Indian Reservation, pursuant to its power under Article VI, Section 1 (j) of the Constitution of the Chippewa Cree Tribe.
5. The overall purpose of this Ordinance is to aid in the collection of taxes and ensure that alcoholic beverages are not subject to both the State and the tribal tax. The provisions of this Ordinance must be broadly construed to accomplish this purpose.

Sec. 102. Definitions.

As used in this Chapter, unless otherwise noted, the following definitions apply:

1. "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
2. "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.
3. "Agreement" means the Chippewa Cree – Montana Alcoholic Beverage Tax Agreement.
4. "Beer" means:
 - a. A malt beverage containing not more than 8.75% of alcohol by volume; or

- b. An alcoholic beverage containing not more than 8.75% of alcohol by volume:
 - i. that is made by alcoholic fermentation of an infusion of decoction, or a combination of both, in potable brewing water, or malted cereal grain; and
 - ii. in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.
- 5. “Beer importer” means a person other than a brewer who imports malt beverages.
- 6. “Brewer” means a person who produces malt beverages.
- 7. “Caffeinated or stimulant-enhanced malt beverage” means:
 - a. a beverage:
 - i. that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;
 - ii. that contains at least 0.5% of alcohol by volume;
 - iii. that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.5; and
 - iv. to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or
 - b. a beverage:
 - i. that contains at least 0.5% of alcohol by volume;
 - ii. that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
 - iii. to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

- iv. to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;
 - v. for which the producer is required to file a formula for approval with the United States Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR 25.55; and
 - vi. that is not exempt pursuant to 27 CFR 25.55(f).
8. “Distributor” means any person:
- a. who imports liquor, beer, or wine for sale, use or distribution, or
 - b. who engages in the wholesome distribution of liquor, beer, or wine within the Reservation.
9. “Hard cider” means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.
10. “Import” means to transfer beer or table wine from outside the state of Montana into the state of Montana.
11. “Liquor” means an alcoholic beverage except beer and table wine. The term includes a caffeinated or stimulant-enhanced malt beverage.
12. “Malt beverage” means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the additional of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.
13. “Person” means any person, firm, association, joint-stock company, syndicate, or corporation.
14. “Posted price” means the wholesale price of liquor for sale to persons who hold liquor licenses.
15. “Proof gallon” means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

16. "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.
17. "State" means the State of Montana.
18. "Table wine" means wine that contains not more than 16% of alcohol by volume and includes cider.
19. "Table wine distributor" means a person importing into or purchasing in Montana table wine or sacramental wine for sale or resale to retailers licensed in Montana.
20. "Tribe" means the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation.
21. "Wholesaler" means any person who engages in the wholesale distribution of liquor, beer, or wine within the Reservation.
22. "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice or sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine.

Sec. 103. Liquor Excise Tax.

1. The Tribe (with the assistance by the State pursuant to the Agreement) shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the Chippewa Cree Tribe an excise tax at the rate that is the percent of the retail selling price determined in accordance with the following schedule based on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed the liquor and sold the specified number of proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section:

Nationwide production	Tax rate
-----------------------	----------

Less than 20,000 proof gallons	3%
20,000 to 50,000 proof gallons	8%
50,001 to 200,000 proof gallons	13.8%
Over 200,000 proof gallons	16%

2. The tax imposed pursuant to subsection (1) is due no later than the 10th day of each month.
3. The tax imposed in this subsection shall be collected by the Tribe (with the assistance by the State pursuant to the Agreement).

Sec. 104. License Tax on Liquor.

The Tribe (with the assistance of the State pursuant to the Agreement) may collect at the time of sale and delivery of any liquor of:

1. 10% of the retail selling price on all liquor sold and delivered within the Reservation by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;
2. 8.6% of the retail selling price on all liquor sold and delivered within the Reservation by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 50,000 proof gallons but not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;
3. 2% of the retail selling price on all liquor sold and delivered within the Reservation by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 50,000 proof gallons of liquor nationwide in the calendar year preceding imposition of tax pursuant to this section;
4. The license tax must be charged and collected on all liquor produced in or brought within the Reservation and taxed by the Tribe. The retail selling price must be computed by adding to the cost of the liquor the Tribe markup of 40.5% for all liquor other than sacramental wine, for which the markup must be 20% and fortified wine containing more than 16% but not more than 24% alcohol by volume, for which markup must be 51%. The license tax must be figured in the same manner as the Tribe excise tax and is in addition to the Tribe excise tax.

5. The licensee tax imposed in this subsection shall be collected by the Tribe (with the assistance by the State pursuant to the Agreement).

Sec. 105. Beer Exercise Tax.

1. A tax is imposed on each barrel of 31 gallons of beer sold on the Reservation by a wholesaler. A barrel of beer equals 31 gallons. The tax is based upon the total number of barrels of beer produced by a brewer in a year. A brewer who produces less than 10,000 barrels of beer a year is taxed on the following increments of production:
 - a. up to 5,000 barrels, \$1.30;
 - b. 5,001 barrels to 10,000 barrels, \$2.30.
 - c. The tax on beer sold for a brewer who produces over 10,000 barrels is \$4.30.
2. The Tribe shall compute the tax due on beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons.
3. The tax imposed pursuant to subsection (1) is due at the end of each month from the wholesaler upon beer sold by the wholesaler during the month.
4. The tax imposed in this subsection shall be collected by the Tribe (with the assistance by the State pursuant to the Agreement).

Sec. 106. Wine and Hard Cider Tax.

1. A tax of 27 cents per liter is imposed on sacramental wine and table wine, except hard cider, imported by a table wine distributor and on table wine shipped directly to consumers or licensed retailers by a winery registered or licensed.
2. A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor and on hard cider shipped directly to licensed retailers by a winery licensed.
3. The tax imposed pursuant to subsection (1) is due on or before the 15th day of each month for sales in the previous month.
4. The tax imposed in this subsection shall be collected by the Tribe (with the assistance by the State pursuant to the Agreement).

Sec. 107. Uniformed Penalty and Interest Assessments for Violation of Tax.

A person who fails to pay an imposed tax by due date, including any extension of time allowed, shall be assessed a late filing penalty. The penalty is greater of \$50 or 5% of the tax due for each month during which there is a failure to file return or report, not to exceed an amount up to 25% of the tax due. The late filing penalty is calculated from the due date or extended due date. The penalty is computed only on the net amount of tax due, if any, as of the original due date or extended due date, after credit has been given for amounts paid through withholding, estimated tax payments, or other credits claimed on the return. The penalty and interest imposed in this subsection shall be collected by the Tribe (with the assistance by the State pursuant to the Agreement).

Sec. 108. Powers Reserved to Chippewa Cree Business Committee.

Nothing in this Ordinance is intended to restrict the Tribe from prohibiting the sale and consumption of liquor or of all alcoholic beverages within the exterior boundaries of the Rocky Boy's Indian Reservation. Furthermore all powers relating to regulation and control over alcoholic beverages which are not expressly delegated in this Ordinance shall be retained by the Chippewa Cree Business Committee.

Sec. 109. Exemptions.

Nothing in this Ordinance restricts the Chippewa Cree Business Committee from establishing exemptions within this Ordinance. Any exemptions shall be adopted by Resolution.

Sec. 110. Sovereign Immunity Preserved.

Nothing in this Ordinance is intended or shall be construed as a waiver of sovereign immunity of the Chippewa Cree Tribe.

Sec. 111. Enforcement.

The Tribe may commence and prosecute to final determination in the Chippewa Cree Tribal Court or any court of competent jurisdiction an action to collect taxes and penalties pursuant to this Ordinance.

Sec. 112. Application of Federal Laws.

Federal law currently prohibits the introduction of alcoholic beverages into Indian country (18 U.S.C. §1154), and expressly delegates to the Tribes the decision regarding when and to what extent liquor transactions shall be permitted (18 U.S.C § 1661). Persons involved in acts and transactions not authorized by this Chapter shall be subject to federal criminal prosecution, as well as civil legal action in the courts of the United States.

Sec. 113. Severability.

Should any section, clause, sentence, or provision of this Ordinance be held invalid for any reason, such hold or decree shall not be construed as affecting the validity of any of the remaining portions hereof, it being declared that the Chippewa Cree Business Committee would have adopted the remainder of this Ordinance, notwithstanding the invalidity of any such Section, clause, sentence, or provision.

Sec. 114. Amendment.

Amendments to this Ordinance may be made only the Chippewa Cree Business Committee of the Chippewa Cree Tribe.

Sec. 115. Effective Date.

This Ordinance was adopted by the Chippewa Cree Business by Resolution No. 52-20 and is effective on the 6th day of June, 2020.

Tara Sweeney,

Assistant Secretary – Indian Affairs.

[FR Doc. 2021-00347 Filed: 1/11/2021 8:45 am; Publication Date: 1/12/2021]