

## **Title 17 – Tax**

### **Chapter 11 –Trust Improvement Use and Occupancy Tax**

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### **Legislative History**

**Enacted:**

Ordinance 436 Amending STC Title 17, Chapter 11 Trust Improvement Use and Occupancy Tax (2/8/24).

Ordinance 397 Amending STC Title 17, Chapter 11 Trust Improvement Use and Occupancy Tax (11/13/19).

Ordinance 392 Amending STC Title 17, Chapter 11 Trust Improvement Use and Occupancy Tax (8/6/19).

Ordinance 387 Amending STC Title 17, Chapter 11 Trust Improvement Use and Occupancy Tax (11/6/18).

Ordinance 362 Amending STC Title 17, Chapter 11 Trust Improvement Use and Occupancy Tax (11/1/16), BIA (11/15/16).

Ordinance 342 Adopting the Trust Improvement Use and Occupancy Tax Code (12/16/14), BIA (12/17/14).

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#### **17-11.010 Title.**

This Chapter shall be referred to as the “Trust Improvement Use and Occupancy Tax Code.”

[History] Ord. 342 (12/16/14).

#### **17-11.020 Authority.**

This Chapter is enacted pursuant to Article VI, Sections 1(a), (c), (g), (h), (i), (k) and (l), of the Swinomish Constitution and By-Laws originally ratified by the Tribe on November 16, 1935, and approved by the Secretary of the Interior on January 27, 1936, and as most recently amended and ratified by the Tribe on May 23, 2017 and approved by the Secretary of the Interior on July 7, 2017; the inherent sovereign powers of the Swinomish Indian Tribal Community; rights reserved in the Treaty with the Dwamish, Suquamish, etc., (“Treaty of Point Elliott”), 12 Stat. 927 (January 22, 1855), 25 C.F.R. § 162.017, and such other powers as have been delegated to, vested in, or confirmed in the Tribe through the actions of the United States.

[History] Ord. 342 (12/16/14).

## 17-11.030 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this Chapter shall be as set forth in this Section:

- (A) **“Administrative Record”** means a true and correct record of administrative proceedings, including, if applicable, Protest Letters, Requests for Refund, Requests for Reconsideration, Requests for Hearing, transcripts of hearings, all written decisions, and relevant documents submitted to or considered by the Swinomish Tax Authority, the Assessor, or the Hearing Officer.
- (B) **“Assessed Value”** means the Fair Market Value of a Permanent Improvement the use of which is subject to taxation under this Code as determined by the Assessor.
- (C) **“Assessor”** means a person authorized by the Tribe to determine the value of property for the purpose of taxation.
- (D) **“Building” or “Buildings”** means any structure attached to, located on, or placed on land.
- (E) **“Chief Financial Officer”** means the Chief Financial Officer of the Swinomish Indian Tribal Community, including employees and contract professionals supervised by the Chief Financial Officer to whom the Chief Financial Officer may delegate authority to take actions designated in this Code.
- (F) **“Combined Household Gross Income”** means the sum total of the Gross Income of the person claiming an exemption under this Code, the Gross Income of his or her spouse or registered domestic partner, and the Gross Income of each cotenant occupying the Permanent Improvement for which an exemption is sought at the time an Exemption Claim is filed.
- (G) **“Doing business”** means engaging in any activity, whether temporary, intermittent, occasional, seasonal or otherwise, with the object of gain, benefit, advantage or other return, whether direct or indirect, immediate or future, tangible or intangible, or economic or non-economic, and specifically includes the lease, sublease, or assignment or acceptance of assignment of a lease or sublease of Swinomish Indian Lands and the purchase, ownership, sale, lease, sublease, use or occupancy of any Permanent Improvement on Swinomish Indian Lands.
- (H) **“Entity”** means any sole proprietorship, partnership, company, limited liability company, corporation, joint venture, club company, joint stock company, business trust, trust, estate, firm, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, or any other legal organization.

- (I) **“Fair Market Value”** means the amount of money that a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied.
- (J) **“Land Lease”** means a written contract whereby the lessee is granted a right to possess, use or occupy land for a specified purpose and duration, and includes a master lease, a sublease and a lease or sublease that has been assigned.
- (K) **“Local Taxing District”** means a taxing district located in Skagit County, Washington that was established pursuant to the laws of the State of Washington, including but not limited to a school, fire, library or port district.
- (L) **“Notice”**, as it is required to be given in this Chapter, means written notification sent via United States First Class mail, postage prepaid.
- (M) **“Occupy”** means to hold, possess, do business, reside, or otherwise conduct activity in or on.
- (N) **“Permanent Improvement”** means a building or other property that is located on or attached to land and that is regarded as an irremovable part of the real property.
- (O) **“Person”** means any individual, entity, lessee, sublessee, receiver, assignee, or trustee in bankruptcy.
- (P) **“Principal Place of Residence”** means the location where a person claiming an exemption under this Chapter resided for at least 183 days during the calendar year during which the exemption is claimed.
- (Q) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
- (R) **“Senate Tax Committee”** is a committee established by the Swinomish Indian Senate, the governing body of the Tribe.
- (S) **“Skagit County”** means Skagit County, Washington, a political subdivision of the State of Washington, and where context requires includes the elected officials and authorized employees of Skagit County.
- (T) **“Skagit County Assessed Value”** means the Fair Market Value of a Permanent Improvement the use of which is subject to taxation under this Code as determined by the Skagit County Assessor for purposes of taxes imposed for the year subsequent to the year of assessment; *provided*, however, that if the Assessor’s determined value was altered as a result of a taxpayer contest, then the “Skagit County Assessed Value” is the value of the property as finally determined in such contest.

- (U) **“State”** means the State of Washington, and where context requires includes the elected officials and authorized employees of the State.
- (V) **“Swinomish Indian Lands”** means Federal Indian trust or restricted land, whether located within or without the boundaries of the Swinomish Indian Reservation, that is owned in the name of the United States and held in trust for the Swinomish Indian Tribal Community and/or an individual Indian or Indians and that is within the jurisdiction of the Swinomish Indian Tribal Community.
- (W) **“Tax Administrator”** means the person authorized by the Tribe to administer functions established by this Chapter, including but not limited to coordinating with the Assessor to secure values of Permanent Improvements, notifying taxpayers of the Permanent Improvement values, preparing and transmitting tax bills, and communicating with the taxpayer community.
- (X) **“Tax Rate”** means the numerical amount of taxes to be levied expressed in terms of dollars per \$1,000 of assessed value, e.g., \$1.00 per \$1,000 of assessed value.
- (Y) **“Tax Year”** means the year in which a tax established by this Chapter, or the initial installment thereof, is due and payable.
- (Z) **“Tribal Court”** means the court of the Swinomish Indian Tribal Community.
- (AA) **“Tribe”** means the Swinomish Indian Tribal Community, a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, whose governing body is the Swinomish Indian Senate.
- (BB) **“Use”** means an act or acts by which the taxpayer employs, puts into service, utilizes, holds or otherwise controls the taxable property.

[History] Ord. 436 (2/8/24); Ord. 397 (11/13); Ord. 392 (8/6/19); Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

#### **17-11.040 Jurisdiction.**

- (A) This Chapter shall apply to the full extent of the jurisdiction of the Swinomish Indian Tribal Community.
- (B) **Condition of Use.** Compliance with this Chapter is hereby made a condition of the lease, sublease, assignment or acceptance of assignment of a lease or sublease, use or occupancy of any Swinomish Indian Lands, or the purchase, ownership, sale, lease, sublease, use or occupancy of any Permanent Improvement on Swinomish Indian Lands to the maximum extent permitted by law.

(C) **Deemed to Consent.** Any person who does business, resides, leases, subleases, assigns or accepts assignment of a lease or sublease, uses or occupies any Swinomish Indian Lands, or who purchases, owns, sells, leases, subleases, uses or occupies any Permanent Improvement on Swinomish Indian Lands shall be deemed thereby to have consented to the following:

- (1) To be bound by the terms of this Chapter;
- (2) To the exercise of jurisdiction by the Swinomish Indian Tribal Community over the person, Permanent Improvements, and by the Tribal Court in legal actions arising pursuant to this Chapter.

[History] Ord. 342 (12/16/14).

#### **17-11.050 Tribal Governmental Programs and Services.**

The Senate finds that, as a result of actions and decisions by the United States, the ownership of the land within the Reservation is shared by the Tribe, the United States in trust for the Tribe and individual Indians, and non-Indians, resulting in a patchwork of ownership and Tribal ability to provide governance, programs and services. Within this context, programs and services made available by the Tribal government that benefit persons in various areas of the Reservation include:

- (A) governmental services, such as:
  - (1) public sewage collection and disposal systems,
  - (2) water systems to provide safe drinking water and fire protection,
  - (3) Tribal roads, and
  - (4) assignment of Tribal paraprofessional employees to provide educational services off-Reservation in the La Conner public school system;
- (B) maintenance of public health, safety, welfare, and law and order, including:
  - (1) Tribal police,
  - (2) Tribal fisheries management and enforcement, with the State of Washington,
  - (3) hazardous emergency response,
  - (4) managing, preserving, conserving, restoring, and enhancing the Reservation environment and habitats, and regulation and protection of Reservation air quality, water quality, shorelines and sensitive areas, and
  - (5) comprehensive land use planning and regulation;

- (C) a Tribal Court system with general jurisdiction for the resolution of civil disputes and limited jurisdiction for the prosecution of criminal actions;
- (D) protection of Reservation lands and natural and cultural resources;
- (E) provision and maintenance of parks and open space, such as Kukutali Preserve, co-owned and managed with Washington State Parks;
- (F) support of Reservation community, cultural and religious events, institutions and activities, including the Treaty Day, Blessing of the Fleet, Memorial Day, Fourth of July, Canoe Journey, Swinomish Days, Veterans Day and winter holiday and cultural events;
- (G) promotion and regulation of Reservation businesses and economic development; and
- (H) provision of employment opportunities for both members and non-members of the Tribe.

[History] Ord. 342 (12/16/14).

**17-11.060      Need for Tribal Governmental Revenue.**

The Senate finds that:

- (A) The entire Reservation community, both Indian and non-Indian, shares a portion of Fidalgo Island, and whether leasing, subleasing, using or occupying Swinomish Indian Lands or purchasing, owning, selling, leasing, subleasing, assigning or accepting assignment of, using or occupying a Permanent Improvement, residing, being employed, or otherwise doing business on the Reservation, directly and indirectly benefits from Tribal governance of the Reservation and Tribal governmental services and programs.
- (B) Tribal governmental services and programs improve the overall quality of life on the Reservation, whether those programs and services are provided directly to Tribal members, Native Americans or the entire Reservation community, by preserving and enhancing the natural environment, providing parks and other open or public spaces, public safety, roads, enhancing physical and mental health, education, and continuing and enhancing Swinomish social, economic and cultural life, thereby contributing to the social safety net and enriching the fabric of Reservation life.
- (C) Governmental services provided by the Tribe to Tribal members and other Natives seek to reduce historic disparities in Native American health metrics, education and economic outcomes, thereby reducing inequality and inequity across the Reservation community as a whole and promoting social stability and public welfare.

- (D) Tribal governmental services and programs supplement or replace services or programs that would or should otherwise be provided or operated by other governments, and thereby relieve other units of government from the full burden of providing these services and programs.
- (E) The United States has historically not fully or sufficiently funded the services that it is obligated to provide pursuant to its Treaty obligations and/or the Federal trust responsibility, thereby requiring the Tribe to secure other sources of funding in order to more fully provide these essential services.
- (F) It is appropriate, therefore, that the persons occupying or using Permanent Improvements on Swinomish Indian Lands who benefit, directly or indirectly, from this wide variety of Tribal governmental services and programs contribute a portion of the costs of the Tribal programs and services through paying the tax established by this Chapter.

[History] Ord. 342 (12/16/14).

#### **17-11.070 Transition from State/County/Local to Tribal Taxation.**

##### **(A) Transitional Objectives.**

- (1) On July 30, 2013, the United States Court of Appeals for the Ninth Circuit issued its decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, ruling that Washington state and local property taxes may not be imposed on Permanent Improvements on land owned by the United States and held in trust for Indians, without regard to the ownership of the Permanent Improvements.
- (2) On March 31, 2014, the Washington State Department of Revenue issued Property Tax Advisory PTA 1.1.2014, concluding that state and local governments cannot assess property tax on Permanent Improvements built on trust land.
- (3) It is the intent of the Senate that the transitional tax imposed by this Chapter for Tax Year 2015 be at the same rate, and be applicable in the same fashion, as the total of the State, County and local taxing district taxes imposed on Permanent Improvements situated similarly to those Permanent Improvements on Swinomish Indian Lands in order to reduce disruption in the transition to Tribal taxation from State, County and local taxing district.
- (4) Imposition of the tax established in this Chapter will not result in double-taxation.
- (5) Exercise of the Tribe's taxing authority through enactment of the Trust Improvement Use and Occupancy Tax will ensure continuity of taxation relating to Permanent Improvements located on Swinomish Indian Lands by a jurisdiction with taxing authority.



- (6) Skagit County assessed Permanent Improvements on Swinomish Indian Lands in 2014 for purposes of taxes owing in Tax Year 2015.

[History] Ord. 342 (12/16/14).

**17-11.080 Identification of Tax Year.**

All annual taxes under this Chapter may be known and designated as taxes of the year in which such taxes, shall become due and payable.

[History] Ord. 387 (11/6/18); Ord. 342 (12/16/14).

**17-11.090 Number and Gender.**

Every word importing the singular number only may be extended to embrace the plural number, and every word importing the plural number may be applied and limited to the singular number, and every word importing the masculine gender only may be extended and applied to females as well as males.

[History] Ord. 342 (12/16/14).

***Subchapter I – Imposition of Tax***

**17-11.100 Imposition of Trust Improvement Use and Occupancy Tax.**

A Trust Improvement Use and Occupancy Tax is imposed for Tax Years 2015 and thereafter upon and for the privilege of constructing, placing, owning, occupying or using Permanent Improvements on Swinomish Indian Lands pursuant to a Land Lease, at the tax rate provided in Section 17-11.110 and applied to the Assessed Value of the Permanent Improvements. The tax shall be collected from the person or entity owning the Permanent Improvement.

[History] Ord. 342 (12/16/14).

**17-11.110 Rate of Tax.**

- (A) For Tax Year 2015, the rate of the tax imposed by Section 17-11.100 shall be at the total of the Skagit County Tax Rates (including State, County and local tax districts) for Skagit County Levy Code 1580 for every \$1,000.00 of Skagit County Assessed Value of the Permanent Improvement. The Rate of Tax shall be declared by the Chief Financial Officer in a Swinomish Tax Ruling, which shall be publicly posted on the Tribal website.
- (B) For Tax Years following Tax Year 2018, the rate of the tax imposed by Section 17-11.100 for every \$1,000.00 of Assessed Value of the Permanent Improvement for that Tax Year

shall be declared annually by the Senate Tax Committee in a Swinomish Tax Ruling signed by the Tax Administrator, which shall be publicly posted on the Tribal website.

[History] Ord. 387 (11/6/18); Ord. 342 (12/16/14).

### **17-11.120 Exemptions.**

#### **(A) Senior, Disabled Veteran, and Disabled Taxpayer Exemption.**

A taxpayer who is determined by the Tax Administrator to have met the eligibility requirements of this Section is exempt from paying 65% (sixty-five percent) of the taxes otherwise due under this Chapter.

- (1) A Senior, Disabled Veteran, or Disabled Taxpayer Exemption granted under this Section enters into effect on January 1 of the Tax Year following the year in which the requesting taxpayer filed an approved Exemption Claim.
- (2) An Exemption granted under this Section shall remain in effect for a period five (5) years, or until the benefitting taxpayer no longer meets the eligibility criteria outlined in Section 17-11.120(B), whichever comes first. Any taxpayer claiming a Senior, Disabled Veteran, or Disabled Taxpayer Exemption shall demonstrate, on an annual basis, that he or she continues to meet the financial eligibility criteria. Such a showing must be made by submitting the documentation listed in Section 17-11.120(C)(3)(b) and 3(C) to the Tax Administrator on or before the 31st of December preceding any Tax Year for which the taxpayer intends to claim the Exemption.
- (3) Except for the submission documents as required by Section 17-11.120(A)(3) and such additional documents as may be reasonably requested by the Tax Administrator, taxpayers granted an Exemption under this Section shall not be required to submit additional eligibility documentation for each subsequent Tax Year. However, at the end of the five (5) year Exemption period, or if at any point an Exemption is deemed terminated, the taxpayer must resubmit an Exemption Claim form (including all eligibility documentation required by Section 17-11.120(C)(3)) and receive approval from the Tax Administrator prior to claiming any Exemption under this Section for the following Tax Year.
- (4) No single claimant may receive more than one (1) Exemption under this Section. For purposes of this Section, an eligible marital community, domestic partnership, co-tenancy, or other entity in which two or more natural persons share a Principal Place of Residence shall be treated as a single claimant.
- (5) If a single eligible claimant owns multiple Permanent Improvements, any Exemption awarded under this Section must be applied to the claimant's Principal Place of Residence as per Section 17-11.120(B)(1).

- (6) If taxes, penalties, interest, charges or fees are owed and unpaid on December 31 of any Tax Year for which a taxpayer has an approved Exemption under this Section, that existing Exemption shall be terminated and no Exemption shall be in effect for the following Tax Year and for any subsequent Tax Year in which any such delinquent amounts remain unpaid. If taxes, penalties, interest, charges, or fees are owed and unpaid on December 31 of any Tax Year for which a taxpayer has requested an Exemption under this Section, that pending application shall be denied.

**(B) Eligibility Criteria for Senior, Disabled Veteran, or Disabled Taxpayer Exemption.**

- (1) The taxpayer claiming an exemption from the Trust Improvement Use and Occupancy Tax under this Section must have used or occupied the Permanent Improvement as a Principal Place of Residence during the Tax Year in which the Exemption is requested, and must continue to use the Improvement as his or her Principal Place of Residence for each Tax Year for which an Exemption is claimed.
- (2) The taxpayer claiming an exemption from the Trust Improvement Use and Occupancy Tax under this Section must, at the time of filing the Exemption Claim, own the Permanent Improvement for which the Exemption is requested in fee, as a life estate, or by contract purchase. A Permanent Improvement owned by a marital community, state registered domestic partnership, or co-tenants is deemed to be jointly owned by each spouse, partner, or co-tenant. Any lease for life is deemed a life estate.
- (3) The taxpayer claiming an Exemption under this Section must be:
  - (a) Sixty-one (61) years of age or older on December 31<sup>st</sup> of the Tax Year in which the Exemption Claim is filed, or
  - (b) Receiving Social Security Disability payments at the time the Exemption Claim is filed, or
  - (c) A veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs at a total disability rating for a service-connected disability at the time the Exemption Claim is filed.
- (4) No taxpayer shall qualify for an Exemption under this Section unless the Combined Household Gross Income totals thirty-five thousand dollars (\$35,000.00) or less.

**(C) Procedure for Claiming Senior, Disabled Veteran, or Disabled Taxpayer Exemption.**

- (1) A taxpayer seeking a Senior, Disabled Veteran, or Disabled Taxpayer Exemption must file with the Swinomish Tax Authority a completed Exemption Claim form and supporting documentation demonstrating eligibility for the Exemption, including the documentation itemized in Section 17-11.120(C)(3) on or before December 31<sup>st</sup> of the year preceding the Tax Year for which the Exemption is sought.
- (2) The Tax Administrator may request additional information from the taxpayer as deemed necessary in order to make a determination on the Exemption Claim. When the application is deemed complete, or if the taxpayer fails or refuses to timely provide additional information as requested, the Tax Administrator shall either approve or deny the Exemption Claim. Untimely or incomplete exemption claims shall be denied.
- (3) Adequate supporting documentation for an Exemption Claim must demonstrate that a person meets the age or disability, ownership, income and residency requirements set forth in 17-11-120(A), and shall include, at a minimum:
  - (a) Completed Exemption Claim form;
  - (b) Declaration of Principal Place of Residence;
  - (c) Proof of Combined Household Gross Income consisting of the line indicating “total income” on IRS Form 1040, 1040-SR, or equivalent tax form for the Tax Year prior to the Tax Year for which the Exemption is requested. For non-IRS filers, social security or disability income documentation may be submitted as evidence of Combined Household Gross Income. Non-IRS filers must provide documentation of all income received by the person claiming the exemption, their spouse/partner, and any co-tenants;
  - (d) For persons qualifying on the basis of age, proof of age consisting of a copy of the claimant’s government-issued photo ID and/or birth certificate;
  - (e) For persons qualifying on the basis of disability, a copy of the claimant’s disability award letter from the Social Security Administration or Department of Veterans Affairs.
- (4) Persons who wish to appeal a denial of the Senior, Disabled Veteran, or Disabled Taxpayer Exemption must do so in accordance with the appeal procedures set forth in Subchapter III, including compliance with the timely payment and written protest procedure described in Section 17-11.180(B).
- (5) Taxpayers who are determined to meet the eligibility requirements of this Section, and who were previously found eligible by Skagit County for a Senior Citizen or Disabled Persons Exemption, and who for this reason in Tax Year 2014 paid

reduced property tax on their Permanent Improvement in an amount that is less than the tax that would currently be owed were that taxpayer granted an Exemption under this Section, will be grandfathered under this Code subject to the terms and restrictions below.

- (a) For the lesser of a period of five (5) Tax Years or until the grandfathered taxpayer claiming the exemption under this Section no longer meets the eligibility requirements, the amount of tax owed under this Code will be equal to the dollar amount of taxes on the Permanent Improvement that taxpayer paid in Tax Year 2014.
- (b) A taxpayer grandfathered pursuant to this Subsection who remains eligible for an Exemption under this Section may file a renewed Exemption Claim for Tax Year 2020 and, if approved by the Tax Administrator, will retain grandfathered status for Tax Year 2020.
- (c) Beginning with Tax Year 2021, part (5)(a) of this Subsection, above, will no longer be in effect, all exemptions under this Chapter will be based solely on the qualification requirements herein, and the percentage of taxes to be exempted for all qualifying taxpayers shall be based solely on the table in Section 17-11.120(A)(1).

(D) **Other Exemptions.** The following are also exempt from taxation under this Chapter:

- (1) A Permanent Improvement or taxpayer not eligible for a Senior, Disabled Veteran, or Disabled Taxpayer Exemption but which or who would otherwise be exempt from a State, County, or local taxing district property tax is exempt from the tax provided for in this Chapter to the same extent; *provided*, however, that no Permanent Improvement shall be exempt from the tax provided for in this Chapter on the basis of or under the authority of the decision in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, Washington State Department of Revenue Property Tax Advisory PTA 1.1.2014, or other determinations or decisions implementing these legal authorities.

[History] Ord. 436 (2/8/24); Ord. 397 (11/13/19); Ord. 392 (8/6/19); Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

#### **17-11.130 Exclusive County and State Review of Skagit County Actions.**

- (A) All taxpayer claims and disputes concerning Skagit County's assessments and notices concerning Permanent Improvements on Swinomish Indian Lands shall be resolved solely and exclusively through and in accordance with processes and procedures of Skagit County and the State of Washington that are conducted pursuant to the laws of Skagit County and the State of Washington.

- (B) Nothing in this Chapter is intended to, or shall, extend or alter any due date, deadline or procedure under the laws of Skagit County or the State of Washington for a taxpayer to dispute or seek review of any assessment or notice.

[History] Ord. 342 (12/16/14).

***Subchapter II – Administration, Collection and Enforcement***

**17-11.140 Administrative Procedures for Payment of Taxes.**

- (A) **Date Tax is Applied.** The Assessed Value of Permanent Improvements shall be utilized to determine the tax imposed on and as of January 1 of the following year (i.e. of the “Tax Year”).
- (B) **Date Tax is Due.** The amount of any tax imposed and owing as provided by this Chapter shall be due and payable, in US currency, without penalty on or before April 30 of the Tax Year and shall be and is delinquent after that date; *provided*, however, that when the total amount of tax payable by one person is fifty dollars (\$50.00) or more, the tax due and owing may be paid in two installments, with the first payment due April 30 and which shall be and is delinquent after that date, with the unpaid balance of such tax due and payable on or before October 31 of the Tax Year, and which shall be and is delinquent after that date.
- (C) **Sale of Permanent Improvement.**
- (1) The tax imposed by this Chapter is due even if the Permanent Improvement is sold or transferred after January 1 of the tax year.
  - (2) As between the grantor or vendor and the grantee or purchaser of any Permanent Improvement, when there is no express agreement as to payment of the taxes thereon due and payable in the calendar year of the sale or the contract to sell, the grantor or vendor shall be responsible and liable for the payment of taxes, interest and penalties due and owing for the calendar year through the date of the sale or the contract to, and the grantee or purchaser shall be liable for the remainder of such taxes and subsequent taxes.
  - (3) If grantor or vendor has an exemption in place at the time of a sale of a Permanent Improvement, that exemption shall expire upon the date of sale and grantee or purchaser shall be liable for the tax liability, without the prior exemption, beginning on the date of sale. The grantee or purchaser may seek an exemption on his or her own behalf in accordance with this Chapter.
- (D) The Tax Administrator shall prepare a list of all taxes established by this Chapter that are due each Tax Year, and shall include on the record of the current taxes due a listing of all delinquent taxes owing under this Chapter, showing the amounts owing and delinquent for each year.

- (E) The Tax Administrator shall annually notify each person responsible for the payment of taxes established by this Chapter of the current and delinquent amount of tax due under this Chapter.
- (F) Payments of taxes postmarked after the applicable date in Section 17-11.140(B) will be considered delinquent and may be returned for payment of interest. Payment of delinquent taxes may not be processed without payment of such interest.
- (G) If any payment by check is returned by the issuing bank or other financial institution on the basis of “insufficient funds,” or for any other reason, the taxpayer will be notified and is responsible for payment of the original tax amount, and interest, penalties and all financial institution fees assessed. If the return of a check by a bank causes the tax payment to be late, the taxpayer must pay any additional interest or penalties that may be assessed as a result of the late payment. Any such payment made following return of a check must be by cashier’s check or money order.

[History] Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

#### **17-11.150 Electronic Collection and Payment of Taxes.**

- (A) The tax imposed by this Chapter, and any interest or penalties owing, may be paid by debit or credit card, if desired by the taxpayer.
- (B) All payments by debit or credit card shall be made pursuant to, and in accordance with, the processes set forth in a Tax Procedure Ruling signed by the Tax Administrator, which shall be publicly posted on the Tribal website.
- (C) The Swinomish Tax Authority shall charge any taxpayer making payment by debit or credit card a processing fee in addition to the tax, interest or penalty being paid by the taxpayer.

[History] Ord. 387 (11/6/18).

#### **17-11.160 Payment by Mortgagee or Other Lien Holder.**

Any person who has a lien by mortgage or otherwise, upon any Permanent Improvement on Swinomish Indian Lands upon which any taxes imposed by this Chapter have not been paid, may pay such taxes, and the interest, penalty and costs thereon, and may request a receipt issued by the Tax Administrator which shall constitute an additional lien upon such Permanent Improvement, to the amount therein stated, and the amount so paid and the interest thereon at the rate specified in the mortgage or other instrument shall be collectible with, or as a part of, and in the same manner as the amount secured by the original lien; *provided*, that the person paying such taxes shall pay the same as mortgagee or other lien holder and shall procure a notation upon the receipt issued by the Tax Administrator for the payment showing the mortgage or other lien relationship of the person paying such taxes, and *provided further* that the person paying such taxes shall cause the

same to be recorded with the Skagit County Auditor within ten days after the payment of such taxes and the issuance of such receipt.

[History] Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

**17-11.170 Permanent Improvement Value Determinations by the Assessor.**

- (A) The Assessor shall determine the Value of Permanent Improvements subject to the taxes established by this Chapter on an annual and systematic basis, with the process set out in a Tax Procedure Ruling.
- (B) The Assessor shall value the Permanent Improvements consistent with the principle of uniformity of valuation of equivalent Permanent Improvements, utilizing a consistent process from year to year.
- (C) The Assessor shall provide to the Tribe notice of any annual change in the Assessed Value of a Permanent Improvement.
- (D) The Tax Administrator shall issue a Valuation Notice for each Permanent Improvement subject to taxation under this Chapter on or before December 31 of each year.
- (E) The Senate Tax Committee is authorized to establish and modify assessment procedures through a Swinomish Tax Procedure Ruling, signed by the Tax Administrator, which shall be publicly posted on the Tribal website.

[History] Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

**17-11.180 Claim for Refund of Trust Improvement Use and Occupancy Tax Paid to Tribe.**

- (A) **Refund for Overpayment.** Taxpayers who have paid to the Tribe a tax imposed by this Chapter in error or who erroneously overpaid to the Tribe a tax imposed by this Chapter, and when such an error is not identified and corrected by the Tax Administrator on his or her own initiative, must make a written request to the Tax Administrator for a refund. The Request for Refund must state each and every one of the factual or legal grounds upon which the tax is claimed to have been erroneously paid or overpaid, and must include all evidence supporting the claimed error or overpayment.
  - (1) The Request for Refund must be postmarked or received by the Tax Administrator within one year of the due date of the payment sought to be refunded. Any untimely request will not be considered.
  - (2) The Request for Refund must include:
    - a. The account number and physical address for the property;



- b. A statement that the taxpayer is requesting a refund for taxes paid;
  - c. Taxpayer's name;
  - d. Taxpayer's mailing address for correspondence regarding the Request for Refund;
  - e. Taxpayer's email address [if any] and daytime phone number;
  - f. Taxpayer's reason for requesting a refund of taxes paid; and
  - g. Taxpayer's signature.
- (3) Interest on refunds at the rate of one percent (1%) per month accrues from the date taxes were paid and will be included in the amount to be refunded, unless a refund is made within 60 days of the payment of the tax.
- a. The Tax Administrator shall issue a Decision approving or denying a taxpayer's Request for Refund within one hundred and eighty (180) days of receipt, unless the Tax Administrator determines that additional time is needed. If the Tax Administrator is unable to issue the Decision within one hundred and eighty (180) days, the taxpayer will be notified of the date by which the Decision is expected to be issued.
- (4) The Tax Administrator's decision is subject to appeal pursuant to Subchapter III. If the decision is not timely appealed, the decision is final and not subject to further review.
- (5) A tax for which a refund request is made, but such request does not comply with deadline, evidentiary or procedural requirements set forth in this Section, is conclusively considered to be properly paid and non-refundable.

**(B) Protest of Tax Claimed to be Unlawful or Otherwise Invalid.**

- (1) In order to preserve a right to seek a refund of any tax paid to the Tribe pursuant to this Chapter, the imposition or calculation of which is claimed to be unlawful or otherwise invalid or incorrect, a taxpayer must make a timely payment of the tax to the Tribe and must accompany that timely payment with a written protest directed to the Tax Administrator setting forth each and every one of the factual or legal grounds upon which the tax, any portion of the tax, or any associated fee, penalty or interest, is claimed to be unlawful or otherwise invalid or incorrect.
- (a) No protest accompanying a tax payment shall be deemed to include protest of taxes due in preceding or succeeding years.

- (b) A statement on a check or money order that the tax is being paid under protest is not sufficient to preserve the right to seek a refund.
- (2) When the taxpayer submits a written protest as provided in this Section, the taxpayer is thereafter prohibited from raising grounds not set forth in the protest as a basis for a refund.
- (3) Any tax paid without a written protest, as provided in this Section, is conclusively considered to be voluntarily paid and not subject to a claim for refund.
- (4) A prominent notice of the written protest requirement shall be included as part of, or enclosed with, property tax notices or statements issued pursuant to this Chapter.

**(C) Claim for Refund of Tax Claimed to be Unlawful or Otherwise Invalid.**

- (1) Taxpayers may request a refund of a tax paid to the Tribe for which a written protest has been made by submitting a Request for Refund to the Tax Administrator. The Request must include a copy of the written protest submitted in accordance with Section 17-11.180(B), and must include all evidence supporting the claimed error or overpayment.
- (2) The Request for Refund must be received by the Tax Administrator within one year of the due date of the payment sought to be refunded. Any untimely request will not be considered.
- (3) Interest on refunds, at the rate of one percent (1%) per month accrues from the date taxes were paid and will be included in the amount to be refunded, unless refund is made within 60 days of the payment of the tax.
- (4) The Tax Administrator shall issue a Decision approving or denying a taxpayer's Request for Refund within one hundred and eighty (180) days of receipt, unless the Tax Administrator determines that additional time is needed. If the Tax Administrator is unable to issue the Decision within one hundred and eighty (180) days, the taxpayer will be notified of the date by which the Decision is expected to be issued.
- (5) The Tax Administrator's decision is subject to appeal pursuant to Subchapter III. If the decision is not timely appealed, the decision is final and not subject to further review.
- (6) Any tax paid for which a refund request is not made in compliance with this Section is conclusively considered to be properly paid and non-refundable; *provided*, however, that the Tax Administrator is authorized to correct on his or her own initiative a payment to the Tribe made in error or erroneously overpaid, along with interest as provided in Section 17-11.180(A)(2).

**(D) Unavailability of Protest and Claim for Refund Procedures for Challenges to Assessed Value of Permanent Improvement.**

- (1) Neither the protest nor the Request for Refund procedure established by this Section shall be available to or utilized by taxpayers who dispute the Assessed Value of a Permanent Improvement. Requests for Refund based upon a disputed Assessed Value will not be considered or adjudicated.
- (2) The exclusive remedy for a taxpayer to dispute the Assessed Value of their Permanent Improvement is provided in section 17-11.310.

[History] Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

**17-11.190 Administration of Chapter.**

- (A) This Chapter shall be administered by the Tax Administrator under the supervision of the Tribe's General Manager. The Tax Administrator may employ persons and contract with specialized professionals to provide information or services necessary to impose, collect, enforce and account for the tax.
- (B) The Swinomish Indian Senate is authorized to enter into intergovernmental agreements with Skagit County or local taxing districts for the performance of any or all of the Tribal duties and responsibilities imposed, and actions authorized, by this Chapter.

[History] Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

**17-11.200 Senate Tax Committee and Tribal – Taxpayer Consultation Council.**

- (A) A Senate Tax Committee is established to provide policy review and guidance of the administration of this Chapter by the Tax Administrator, to recommend amendments to this Chapter and to recommend contributions from taxes raised pursuant to this Chapter to local taxing districts.
- (B) A Tribal – Taxpayer Consultation Council may be established to provide a formal forum in which representatives of persons paying taxes established by this Chapter may share questions, suggestions and concerns with, and engage in dialogue with, the Senate Tax Committee concerning the administration of the taxes established by this Chapter.
  - (1) The Senate Tax Committee may assist in establishing a procedure by which persons paying taxes established by this Chapter may select representatives to participate in the Tribal – Taxpayer Consultation Council. The selection procedure shall provide an opportunity for participation by persons with Permanent Improvements on Swinomish Indian Lands in Shelter Bay, outside of Shelter Bay and on Swinomish Indian Lands utilized for commercial purposes.

- (2) The Tribal – Taxpayer Consultation Council may meet at least annually, but may meet more frequently as is agreed to be necessary by the Tribal and taxpayer participants.
- (3) The Tribal – Taxpayer Consultation Council may make recommendations for consideration by the Senate concerning the administration of the taxes established by this Chapter.

[History] Ord. 362 (11/1/16); Ord. 342 (12/16/14).

#### **17-11.210 Interest on Late Payments.**

If any sum payable under this Chapter is not paid to the Tribe by the date specified in Section 17-11.140(B), there shall be added to the unpaid sum interest at the rate of one percent (1%) per month on the amount of the taxes due for the full year, until the tax is paid in full.

[History] Ord. 342 (12/16/14).

#### **17-11.220 Penalties for Late Payment.**

In addition to interest on late payments, as provided in Section 17-11.210, if any payment is not made by the due date specified in this Chapter, a penalty of three percent (3%) of the total tax due for the year (exclusive of interest and other penalties) shall be added to the taxes owed if still delinquent thirty days after the date the tax is due. An additional penalty of eight percent (8%) of the total tax due for the year (exclusive of interest and other penalties) shall apply if the taxes owed remain delinquent one hundred and eighty (180) days after the date the tax is due.

[History] Ord. 342 (12/16/14).

#### **17-11.230 Cost of Collection Actions.**

- (A) In addition to the tax owing, interest, penalties and fees or charges imposed by this Chapter, the Tribe shall recover its court costs, recording fees, attorney fees and litigation expenses incurred in collecting taxes owing and payable.
- (B) Any judgment entered in any action brought to enforce the provisions of this Chapter or to collect any sums due, including fees, interest and penalties, shall bear interest at the rate of one percent (1%) per month from the date of the entry of the judgment until the judgment is paid.

[History] Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

\*Previously codified as 17-11.240.

**17-11.240 Consequences of Refusal or Failure to Pay.**

- (A) Any person failing or refusing to pay the tax imposed by this Chapter shall be assessed the interest, penalties and costs of collection set forth in Sections 17-11.210 – 17-11.230.
- (B) Any person failing or refusing to pay the tax imposed by this Chapter and whose lease, sublease or assignment of the same requires payment of taxes, is subject to any remedies provided by the lease, sublease or assignment for non-compliance with its terms.
- (C) Any person failing or refusing to pay the tax imposed by this Chapter may, in addition to assessment of the interest, penalties and costs of collection set forth in Sections 17-11.210 – 17-11.230 and any remedies provided by the applicable lease, sublease or assignment of the same, be excluded from the Reservation at the discretion of the Senate and in accordance with Swinomish law.

[History] Ord. 362 (11/1/16); Ord. 342 (12/16/14).

\*Previously codified as 17-11.230.

**17-11.250 Tax Liens.**

- (A) All taxes authorized or assessed by and pursuant to this Chapter are declared to be and are a lien upon the Permanent Improvement in connection with which they have been or may hereafter be imposed or assessed. The lien shall include all charges and expenses of and concerning the taxes which, by the provisions of this Chapter, are directed to be made, including interest, penalties, fees, charges, and costs of collection.
- (B) The lien is in effect from and including the first day of January in the Tax Year in which taxes are levied until the tax, interest, penalties, fees, charges, and costs of collection are paid in full.
- (C) The lien is a priority lien. Any lien created, assessed, or imposed pursuant to this Chapter is superior to and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the Permanent Improvement may become charged or liable. Any lien created, assessed, or imposed pursuant to this Chapter is a title encumbrance on the Permanent Improvement and must be fully paid and satisfied prior to the closing of any conveyance, sale, or transfer of the Permanent Improvement or leasehold interest.
- (D) Notwithstanding Section 17-11.250(C), the lien follows the Permanent Improvement, such that a new owner of a Permanent Improvement, including a purchaser or transferee by quitclaim purchase, may be held liable if the previous owner does not satisfy the lien by paying the tax.
- (E) In the event of the destruction of a Permanent Improvement, the lien imposed pursuant to this Section shall attach to and follow the proceeds of any insurance policy on the

Permanent Improvement and the insurer shall pay to the Tribe from such insurance proceeds all taxes, interest, penalties, fees, charges, and costs of collection that are due.

[History] Ord. 392 (8/6/19); Ord. 387 (11/6/18); Ord. 342 (12/16/14).

**17-11.260 Foreclosure of Tax Liens.**

- (A) When any tax owing pursuant to this Chapter has been delinquent for at least two years, the Tax Administrator shall issue a Declaration of Delinquency, and shall mail, certified mail return receipt requested, the Declaration of Delinquency to the owner(s) of the Permanent Improvement for which the tax is delinquent. The Tax Administrator may publish or record in a publicly accessible location the Declaration of Delinquency, or a similar notice of the amount of delinquent taxes, interest, penalties, charges, and costs, and the existence of the lien created pursuant to Section 17-11.250.
- (B) After issuance of the Declaration of Delinquency, the Tax Administrator and the Office of Tribal Attorney shall, if so directed by the Senate Tax Committee pursuant to Section 17-11.270(A), initiate and prosecute to final judgment or resolution legal proceedings in the Swinomish Tribal Court to foreclose in the name of the Tribe the tax lien(s) identified in the Declaration.
- (C) All lien foreclosure proceedings filed pursuant to Section 17-11.260(B) shall be conducted in accordance with Section 17-11.270 and with Swinomish Tribal Code Title 3, Chapter 2 - Rules of Civil Procedure then in effect.

[History] Ord. 392 (8/6/19); Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

**17-11.270 Procedure for Tax Lien Foreclosures.**

- (A) Upon issuance of a Declaration of Delinquency, the Tax Administrator shall inform and seek the direction of the Senate Tax Committee within 120 days. The Senate Tax Committee shall authorize and direct the Tax Administrator and Office of Tribal Attorney to either pursue tax lien foreclosure or not pursue tax lien foreclosure. If the Senate Tax Committee directs the Tax Administrator and Office of Tribal Attorney to pursue tax lien foreclosure, the tax lien foreclosure proceeding shall be filed within sixty (60) days of the Senate Tax Committee's direction unless otherwise specified.
- (B) No fee or cost shall be charged by the Swinomish Tribal Court for the filing of a lien foreclosure proceeding pursuant to this Chapter.
- (C) **Consideration and Judgment.** The Tribal Court shall hold a hearing prior to judgment.
  - (1) The Court may, in its discretion, continue a case in the interest of fairness and justice to the parties.

- (2) Irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of the taxes, or any omission or defective act of any officer connected with the assessment or levy of the taxes, shall not constitute a defense in a tax lien foreclosure proceeding. The Court shall correct or afford the Tribe an opportunity to correct any irregularity, informality, omission, or error prior to entry of judgment.
  - (3) The Court's judgment shall take the form of an order, signed by a judge of the Swinomish Tribal Court and delivered to the Swinomish Tax Administrator and to the owner(s) of the Permanent Improvement for which the tax is delinquent, that:
    - (a) orders the sale of the Permanent Improvement against which judgment is made for all interest, penalties, charges, and costs ("Order of Sale"), or
    - (b) vacates and sets aside the Declaration of Delinquency, or
    - (c) makes such other order or judgment as may be just and equitable.
  - (4) The Court shall consider and rule upon all outstanding taxes, interest, penalties, charges, and costs when establishing the foreclosure sum in the judgment. Interest and penalties on delinquent taxes shall be calculated up to the date of the entry of the Order of Sale. The judgment is a several judgment against each Permanent Improvement.
  - (5) Any Order of Sale of the Permanent Improvement(s) against which judgment is made shall constitute full and sufficient authority for the Tribe to sell, or employ a third party to sell, the Permanent Improvement(s) for no less than the sum set forth in the Order and to take further steps provided by law.
  - (6) Pursuant to Section 17-11.340(A), the Court's final determination of a tax lien foreclosure action—including but not limited to an Order of Sale issued under Section 17-11.270(C)(3)(a)—is subject to appeal by the Tribe or the owner of the Permanent Improvement(s) against which a judgment is made. Any appeal of an Order of Sale of the Permanent Improvement(s) must be filed within thirty (30) days of entry of the Order.
- (D) **Lien Foreclosure Sale—Conditions.** After receipt of a Tribal Court Order of Sale pursuant to Section 17-11.270(C)(3)(a), the Tax Administrator shall so inform the Senate Tax Committee. Issuance of a Tribal Court Order of Sale or other final judgment issued by the Swinomish Tribal Court authorizes either the Tax Administrator or the Swinomish Department of Land Management to sell, or employ a third party to sell, the Permanent Improvement(s). Beginning in 2020 and for each subsequent year, the Tax Administrator or Swinomish Department of Land Management shall schedule the annual sale of Permanent Improvements under this Chapter, or more frequently if so directed by the Tax Committee.

- (1) All sales must be made by public auction held on or near the Swinomish Reservation. All sales must comply with the public notice requirements set out in Section 17-11.270(E) and take place on a date and time selected to maximize opportunities for participation by all residents of the Swinomish Reservation and surrounding area.
  - (2) The Permanent Improvement(s) must be sold to the highest bid that equals or exceeds the acceptable minimum bid. The acceptable minimum bid is the total amount of taxes, interest, penalties, charges, and costs owed, as specified in the Order of Sale.
  - (3) The Tribe is eligible to bid at the public auction.
  - (4) No employee of the Tribe seeking to purchase the Permanent Improvement(s) for his or her personal benefit or use shall be an eligible bidder if, in his or her official capacity, that employee had direct participation or involvement in the underlying lien foreclosure action.
  - (5) All bidders except the Tribe must pay, at the time of sale and in certified funds, the full amount of the winning bid, which will not be less than the full amount of taxes, interest, penalties, charges, and costs as specified in the Order of Sale. If the highest eligible bid exceeds the acceptable minimum bid due upon the Permanent Improvement(s) as set forth in the Order of Sale, the excess must be paid to the owner of the Permanent Improvement who held title on the date of issuance of the Order of Sale, or a successor in interest. Assignments of interests, deeds, or other documents executed or recorded after issuance of the Declaration of Delinquency do not affect the payment of excess funds to the owner indicated on the Order of Sale or a successor in interest of that owner. The Tax Administrator shall make no fewer than three attempts to contact the owner indicated on the Order of Sale within six months of the sale of the Permanent Improvement at auction. If no written claim for the excess has been received by the Swinomish Tax Authority within one year of the date of sale, all claims to the excess are extinguished and the funds shall revert to the Tribe.
  - (6) At all sales of Permanent Improvement(s) for which a Declaration of Delinquency is held by the Tribe, if no bid equals or exceeds the acceptable minimum bid, the Tribe shall acquire title to the Permanent Improvement(s) as absolutely as if purchased by the Tribe or an individual under the provisions of this Chapter.
- (E) **Lien Foreclosure Sale—Notice.** Prior to any sale of Permanent Improvement(s) under this Chapter, the Tribe must post public notice for at least the seven (7) consecutive days prior to the date of sale in two public locations on the Swinomish Reservation, at least one of which must either be the office of the Swinomish Tax Authority or Swinomish Department of Land Management. The Tribe must also post electronic notice on the Tribe's website and publish written notice in a local publication at least thirty (30) days prior to the date of sale.



- (1) Posted public notice of a sale shall be substantially similar to the following form:

**TAX JUDGMENT SALE**

Public notice is hereby given that pursuant to a Judgment and Order of the Swinomish Tribal Court and an Order of Sale duly issued by the Court, entered the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ in proceedings for foreclosure of tax liens upon the Permanent Improvement commonly known as: [PHYSICAL ADDRESS OF IMPROVEMENT], subject to the Swinomish Use and Occupancy Tax, and as per Chapter 17-11 of the Swinomish Tribal Code, I shall on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock [a.m./p.m.], in the [LOCATION] sell at public auction the Permanent Improvement to the highest and best bidder for certified funds only, to satisfy the full amount of taxes, interest, penalties, charges, and costs adjudged to be due.

Witnessed and signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[NAME]

Director, Swinomish Department of Land Management

- (F) **Redemption Prior to Sale.** Tax liens on Permanent Improvements subject to a Declaration of Delinquency issued under the provisions of this Chapter may be satisfied, and the Permanent Improvement redeemed, at any time prior to the close of business the day before the day of sale of the Permanent Improvement. The person making such redemption must provide payment in certified funds to the Swinomish Tax Authority of the full amount of taxes, interest, penalties, charges, and costs as specified in the Declaration of Delinquency or, if issued, the Order of Sale.
- (G) **Bill of Sale to Purchaser.** In the event a Permanent Improvement is sold under the provisions of this Chapter, the Swinomish Department of Land Management shall execute to the purchaser a Bill of Sale, and deliver the Bill of Sale to the Tribal Court. The Tribal Court shall, after review for compliance with the provisions contained within this Chapter, issue an Order Validating Tribal Bill of Sale. The Department of Land Management or Tax Administrator may subsequently publish or record the Bill of Sale and accompanying Order in any publicly accessible location, including tribal or county recording offices.
- (1) The Department of Land Management shall assess to the recipient of the Bill of Sale a five dollar (\$5.00) document preparation fee. The Bill of Sale recipient is also responsible for any other fees associated with recording the Bill of Sale, as applicable.
- (H) **Bill of Sale to Tribe.** In the event the Tribe acquires title pursuant to Section 17-11.270(D)(6), the Swinomish Department of Land Management shall execute to the Tribe a Bill of Sale, and deliver the Bill of Sale to the Tribal Court. The Tribal Court shall, after review for compliance with the provisions contained within this Chapter, issue an Order Validating Tribal Bill of Sale. The Department of Land Management or Tax Administrator

may subsequently publish or record the Bill of Sale and accompanying Order in any publicly accessible location, including tribal or county recording offices.

[History] Ord. 397 (11/13/19); Ord. 392 (8/6/19).

### ***Subchapter III – Appeals, Computation of Time and Applicable Law***

#### **17-11.280 Administrative Decisions Subject to Appeal.**

- (A) The written decisions of the Tax Administrator issued pursuant to the exemption, protest and refund procedures established by this Chapter, pertaining to the applicability or amount of any exemption denied or terminated, any tax, interest or penalty imposed, or any refund refused pursuant to this Chapter may be appealed pursuant to this Subchapter.
- (B) A determination of the Assessed Value of a Permanent Improvement by the Assessor issued pursuant to the procedures established by this Chapter may be appealed pursuant to this Subchapter.

[History] Ord. 392 (8/6/19); Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

#### **17-11.290 Tribal Administrative Remedies and Tribal Court.**

All cases or controversies arising under the terms and provisions of this Chapter shall be heard only in the Swinomish Tribal Court, and only pursuant to the procedures provided for in this Subchapter. An applicant or other aggrieved party must timely and properly exhaust any and all administrative procedures and remedies provided in this Chapter before seeking review in Tribal Court.

[History] Ord. 342 (12/16/14).

#### **17-11.300 Presumption of Correctness.**

Upon determination of the Assessed Value of a Permanent Improvement by the Assessor, it shall be presumed that the determination establishing such Assessed Value is correct.

[History] Ord. 362 (11/1/16); Ord. 342 (12/16/14).

#### **17-11.310 Appeal of Permanent Improvement Value Determinations by the Assessor.**

- (A) A taxpayer who believes the Assessed Value of the Permanent Improvement on the Valuation Notice is substantially incorrect and wishes to dispute it, must dispute the value by mailing a written Request for Reconsideration to the Tax Administrator postmarked no more than 60 calendar days after the date of the Valuation Notice. The Request for Reconsideration must be mailed to the Tax Administrator at the address given on the disputed Valuation Notice.
- (B) The Request for Reconsideration must include:

- 1) The account number and physical address for the property;
  - 2) A statement that the taxpayer is appealing the valuation in the Valuation Notice;
  - 3) The date of the Valuation Notice;
  - 4) Taxpayer's name;
  - 5) Taxpayer's mailing address for all correspondence regarding the appeal;
  - 6) Taxpayer's email address [if any] and daytime phone number;
  - 7) Taxpayer's opinion as to the correct value of the Permanent Improvement;
  - 8) The basis for the taxpayer's asserted valuation of the Permanent Improvement; and
  - 9) Taxpayer's signature.
- (C) After receipt of a timely Request for Reconsideration, the Tax Administrator may request from the taxpayer additional information supporting the Request for Reconsideration, which must be submitted by the taxpayer prior to reconsideration of the Assessed Value by the Assessor.
- (D) The Assessor shall make a decision upon reconsideration of the Assessed Value within ninety (90) days of receipt of the Request for Reconsideration. If the Assessor determines that additional time is needed in which to make a reconsideration decision, the taxpayer will be notified of the date by which a decision is expected to be issued.
- (E) Taxpayers who believe the Assessed Value of the Permanent Improvement on the Valuation Notice, as it may be upheld or modified by the Assessor upon reconsideration, is substantially incorrect may request a hearing before the Hearing Officer within thirty (30) days of the date of the Assessor's Decision on the Request for Reconsideration. The Request for Hearing shall include:
- (1) A statement of each and every one of the factual or legal grounds for the hearing request, specifically identifying any claimed errors involving any of the following in the challenged decision:
    - (a) Conclusions as to Swinomish law or in the application of such law;
    - (b) Factual findings or determinations; or
    - (c) Arbitrary or capricious action.
  - (2) A statement of all relief sought by the appellant.

- (3) All documents or other evidence supporting the appeal.
- (F) The Hearing Officer shall give the appellant written notice of the time and location of any hearing. Such notice shall be transmitted to the appellant in such a manner that the notice is reasonably calculated to be received by the appellant at least seven (7) days in advance of the date of the hearing. The Hearing Officer's notice shall inform the appellant of his or her right to present evidence and argument, and to be represented or assisted by an attorney or spokesperson authorized to practice in the Swinomish Tribal Court. The Assessor may be represented by the Office of Tribal Attorney or other attorney or spokesperson authorized to practice in the Swinomish Tribal Court.
- (G) The hearing shall be held within ninety (90) days of the receipt of the Request for Hearing; *provided however*, that the Hearing Officer may, in his or her discretion, set the hearing for a later date upon request of a party and for good cause shown.
- (H) The hearing shall be conducted by the Hearing Officer or, at the Hearing Officer's discretion, by an appointed designee, in which case the designee shall carry out the Hearing Officer's functions.
- (I) The hearing shall be on the record established before the Hearing Officer and the materials submitted with the request for hearing.
- (J) A hearing under this Section shall proceed as follows:
- (1) The Hearing Officer's proceeding shall be guided by the objective of admitting probative and reliable evidence that will facilitate the determination of the valuation in a fundamentally fair proceeding without ancillary disputes over evidentiary issues.
  - (2) The Assessor shall first offer the Hearing Officer the Administrative Record containing all relevant documents and evidence in the possession of the Assessor, including the decision appealed from, the valuation at issue, the decision on reconsideration, and may present argument to the Hearing Officer. The Hearing Officer may ask questions of the Assessor and his or her representative, if any, at the hearing.
  - (3) The appellant may offer the Hearing Officer additional relevant documents and evidence and may present argument to the Hearing Officer. The Hearing Officer may ask questions of the appellant and the appellant's representative, if any, at the hearing.
  - (4) The Hearing Officer may request additional information, evidence or arguments from a party or both parties and may, upon request of a party or on its own initiative,

call witnesses, all as determined by the Hearing Officer to be reasonably necessary for a fair determination of the valuation in dispute.

- (5) Pursuant to Section 17-11.300 of this Chapter, the Assessor's valuation is presumed to be correct. The appellant bears the burden of proof of entitlement to the relief requested.
- (6) Following the hearing the Hearing Officer shall deliberate on the appeal. Deliberations may be conducted immediately or, at the Hearing Officer's discretion, at a later time.
- (7) Following deliberations, the Hearing Officer shall issue a written Notice of Decision stating the Hearing Officer's determination and briefly explaining the grounds for its determination. The Hearing Officer, in its discretion, may issue a decision on the merits or may remand the matter to the Assessor for further action and/or evaluation.
- (8) The Hearing Officer shall mail the written Notice of Decision to the appellant, the Assessor, the Tax Administrator and any attorney or spokesperson who has entered an appearance in the hearing proceedings.
- (K) The Hearing Officer shall make an audio record of all hearings.
- (L) The Hearing Officer may require that the reasonable costs of preparing copies of the Administrative Record or of transcribing a record of a hearing be paid by the party requesting copies or a transcript.
- (M) The Hearing Officer shall affirm the decision of the Assessor unless the Hearing Officer determines that the decision is either:
  - (1) Contrary to Swinomish law; or
  - (2) Not supported by a preponderance of evidence in the record of proceedings held before the Hearing Officer; or
  - (3) Arbitrary or capricious.
- (N) If the Hearing Officer determines that the Assessor's valuation will not be affirmed for one of the reasons set forth in Section 17-11.310(M), then the Hearing Officer may reverse the decision of the Assessor, remand the matter to the Assessor for further action and/or evaluation, or may issue a valuation in keeping with the Hearing Officer's review of the evidence.
- (O) The Hearing Officer's decision is subject to appeal pursuant to this Subchapter III. If the decision is not timely appealed, the decision is final and not subject to further review.

- (P) If the Hearing Officer's final decision establishes an Assessed Value that differs from that in the Valuation Notice being appealed, the Tax Administrator shall issue, within thirty (30) days, an Amended Valuation Notice and an Amended Tax Bill reflecting all necessary adjustments to the amounts due and owing, and the Tax Administrator shall issue a refund of any resulting overpayment of taxes for the year at issue in the Hearing Officer's decision, with interest at the rate of one percent (1%) per month accruing from the date the overpayment was made.
- (Q) The procedure set forth in this Section is the exclusive remedy for a taxpayer to dispute the Assessed Value of their Permanent Improvement.
- (R) Taxpayers who appeal a Valuation Notice must pay the tax due and owing based upon the Assessed Valuation in the Valuation Notice notwithstanding that the taxpayer has filed the appeal.

[History] Ord. 387 (11/6/18); Ord. 362 (11/1/16).

**17-11.320 Appeal of Decision by the Tax Administrator on Request for Refund or Exemption Claim.**

- (A) A taxpayer aggrieved by an action or decision of the Tax Administrator pursuant to Section 17-11.180 may appeal such decision to the Swinomish Tribal Court provided the taxpayer has filed a written Request for Refund, as applicable and as required by Section 17-11.180. The appeal to the Swinomish Tribal Court must be filed within thirty (30) calendar days from the date of the Tax Administrator's determination upon the Request for Refund. Any appeal to the Tribal Court shall identify the name of the taxpayer seeking review, the interest of the taxpayer in the decision appealed from, and shall name as respondent only the Tax Administrator in his or her official capacity. The taxpayer shall attach a copy of the written protest directed to the Tax Administrator that accompanied timely payment of the protested tax in accordance and compliance with Section 17-11.180(B), the written Request for Refund and all evidence submitted with the request in accordance and compliance with Section 17-11.180(A) or (C), as applicable, and the Tax Administrator's Decision upon the Request. The taxpayer shall serve a copy of the appeal upon the Tax Administrator and the Office of Tribal Attorney in accordance with Swinomish Tribal Code Title 3, Chapter 2 - Rules of Civil Procedure then in effect.
- (B) The Tribal Court shall set a time and place for a hearing and provide written notice of the hearing to the taxpayer and the Tax Administrator.
- (C) The review on appeal by the Swinomish Tribal Court shall be limited to the issues identified in the Request for Refund. The Court shall not consider any issue that was not raised in the Request for Refund.

- (D) The Tribal Court may accept additional evidence that is material and relevant to the issues on appeal upon a showing by the taxpayer of good cause for not submitting the evidence to the Tax Administrator with the Exemption Claim form or Request for Refund.
- (E) The Tribal Court review shall be conducted by the Court, without a jury. Subject to the limitation in Subsection (D) and the nature of the proceeding as judicial review of an administrative decision, the review shall be in accordance with those provisions of Swinomish Tribal Code Title 3, Chapter 2 - Rules of Civil Procedure that are determined to be applicable by the Tribal Court; *provided*, however, that discovery under such Rules shall be allowed only as determined by the Court to be necessary to allow judicial review of the issues raised on appeal.
- (F) The appellant bears the burden of demonstrating entitlement to the relief requested.
- (G) The Tribal Court shall consider the evidence and arguments presented in support thereof.
- (H) After a full and complete review of the evidence, the Tribal Court shall issue a written decision, setting forth the reasons for the decision. Notice and a copy of the decision shall be sent to the appellant and all interested parties, including any attorney or spokesperson who has entered an appearance in the proceedings.
- (I) The Tribal Court shall affirm the decision of the Tax Administrator upon review unless the appealing party demonstrates to the Court that the decision of the Tax Administrator:
  - (1) Is contrary to Swinomish or Federal law; or
  - (2) Is arbitrary or capricious; or
  - (3) Is not supported by substantial evidence known to the Tax Administrator or submitted with the Request for Refund by the taxpayer; or
  - (4) Should be reconsidered by the Tax Administrator in light of additional evidence considered by the Court that was not known to the Tax Administrator and that may reasonably be expected to change the decision appealed.
- (J) If the Court determines that the aggrieved party has met the burden set forth in Subsection (I), then the Court shall reverse the decision appealed from and shall remand the matter to the Tax Administrator for further proceedings in accordance with the Court's ruling. The Tribal Court shall not have authority to grant any relief to the taxpayer other than an order reversing the decision appealed from and remanding the matter to the Tax Administrator for further proceedings. If the Court determines that the aggrieved party has not met the

burden set forth in Subsection (I), then the Court shall issue an order affirming the decision appealed from.

[History] Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

**17-11.330 Appeal of Decisions by the Hearing Officer on Assessed Valuations.**

- (A) A taxpayer aggrieved by a decision of the Hearing Officer pursuant to Section 17-11.310 may appeal such decision to Tribal Court. The Notice of Appeal to Tribal Court must be filed within thirty (30) calendar days from the date of the Hearing Officer's written decision. Any appeal to the Tribal Court shall identify the name of the taxpayer seeking review, the interest of the taxpayer in the decision appealed from, and shall name as respondent only the Tax Administrator in his or her official capacity. The taxpayer shall attach a copy of the Hearing Officer's written decision on the Request for Hearing and shall state each and every one of the factual or legal grounds upon which the decision of the Hearing Officer is claimed to be incorrect. The taxpayer shall serve a copy of the Notice of Appeal upon the Tax Administrator and the Office of Tribal Attorney in accordance with Swinomish Tribal Code Title 3, Chapter 2 - Rules of Civil Procedure then in effect.
- (B) The Tax Administrator shall file a true and correct copy of the proceedings before the Hearing Officer, including the Request for Reconsideration, Request for Hearing, documents submitted to the Hearing Officer at or in connection with the hearing, transcript of the hearing, and all written decisions, which shall together constitute the administrative record.
- (C) After the filing of the administrative record, the Tribal Court shall set a time and place for a hearing and provide written notice to the taxpayer, the Tax Administrator and the Office of Tribal Attorney of the hearing.
- (D) The review on appeal by the Swinomish Tribal Court shall be limited to the issues identified in the Notice of Appeal and to the evidence in the administrative record. The Court shall not consider any issue that was not raised in the Notice of Appeal.
- (E) The Tribal Court may not consider additional evidence not contained in the administrative record when reviewing the decisions made by the Hearing Officer.
- (F) The Tribal Court review shall be conducted by the Court, without a jury. Subject to the limitations in Subsections (D) and (E) and the nature of the proceeding as judicial review of an administrative decision, the review shall be in accordance with those provisions of the Swinomish Rules of Civil Procedure that are determined to be applicable by the Tribal Court; *provided*, however, that limited and narrowly tailored discovery under such Rules



shall be allowed only in exceptional circumstances as determined by the Court to be necessary to allow judicial review of a procedural challenge to the conduct of the hearing by the Hearing Officer; *provided, further*, that the Court must determine that such a procedural challenge is supported by prima facie evidence of a material procedural irregularity before discovery is authorized.

- (G) The Tribal Court shall consider the administrative record and arguments presented by the taxpayer and Tax Administrator.
- (H) After a full and complete review of the administrative record, the Tribal Court shall issue a written decision, setting forth the reasons for the decision. Notice and a copy of the decision shall be sent to the taxpayer, the Tax Administrator and the Office of Tribal Attorney.
- (I) The Tribal Court shall affirm the decision of the Hearing Officer upon review unless the appealing party demonstrates to the Court that the decision of the Hearing Officer:
  - (1) Is contrary to Swinomish law; or
  - (2) Is arbitrary or capricious; or
  - (3) Is not supported by substantial evidence in the administrative record.
- (J) If the Court determines that the aggrieved party has met the burden set forth in Subsection (I), then the Court shall reverse the decision appealed from and shall remand the matter to the Hearing Officer for further proceedings in accordance with the Court's ruling. The Tribal Court shall not have authority to grant any relief to the taxpayer other than an order reversing the decision appealed from and remanding the matter to the Hearing Officer for further proceedings. If the Court determines that the aggrieved party has not met the burden set forth in Subsection (I), then the Court shall issue an order affirming the decision appealed from.

[History] Ord. 387 (11/6/18); Ord. 362 (11/1/16).

#### **17-11.340 Appeal from the Tribal Court.**

- (A) Any appeal from a decision of the Tribal Court issued pursuant to this Chapter shall be filed and adjudicated in accordance with the Swinomish Rules of Appellate Procedure, Swinomish Tribal Code Title 3, Chapter 4, unless otherwise stated herein.
- (B) The review by the Swinomish Tribal Court of Appeals shall be limited to the evidentiary record made in the proceedings before the Tribal Court. The Court of Appeals shall not consider any issue, argument or evidence that was not raised or presented in the record of proceedings before the Tribal Court.

- (C) The Tribe may charge an appealing party the reasonable costs of preparing copies of the record for the Swinomish Tribal Court of Appeals and for the appealing party.
- (D) The Court of Appeals shall affirm the decision of the Tribal Court issued pursuant to Section 17-11.320 upon review unless the appealing party demonstrates to the Court of Appeals that the decision of the Tax Administrator issued pursuant to Section 17-11.180:
  - (1) Is contrary to Swinomish law;
  - (2) Is arbitrary or capricious;
  - (3) Is not supported by substantial evidence known to the Tax Administrator or submitted with the Request for Refund by the taxpayer; or
  - (4) Should be reconsidered by the Tax Administrator in light of additional evidence considered by the Court that was not known to the Tax Administrator and that may reasonably be expected to change the decision appealed.
- (E) The Court of Appeals shall affirm the decision of the Tribal Court issued pursuant to Section 17-11.330 upon review unless the appealing party demonstrates to the Court of Appeals that the decision of the Hearing Officer issued pursuant to Section 17-11.310:
  - (1) Is contrary to Swinomish law;
  - (2) Is arbitrary or capricious;
  - (3) Is not supported by substantial evidence in the Administrative Record.
- (F) If the Court determines that the aggrieved party has met the burden set forth in Subsection (D) or (E), as applicable, then the Court shall reverse the decision appealed from and shall remand the matter to the Court for remand to the Tax Administrator or Hearing Officer, as applicable, for further proceedings in accordance with the Court's ruling. The Court of Appeals shall not have authority to grant any relief other than an order reversing the decision appealed from and remanding the matter to the Tax Administrator or Hearing Officer for further proceedings.
- (G) The decision of the Court of Appeals shall be final, and is not subject to further review.

[History] Ord. 392 (8/6/19); Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

\*Previously codified as 17-11.330.

**17-11.350 Time and Finality.**

- (A) The date of notice of any decision shall be the date on which the decision is mailed by the body making the decision to the last known address of the applicant. The date of notice shall be stated in the decision.
- (B) All time periods set forth in this Chapter shall be calculated in accordance with Rule 3-02.100, "Computation and Extension of Time", of Swinomish Tribal Code Title 3, Chapter 2 - Rules of Civil Procedure.
- (C) If a decision of the Tax Administrator, Hearing Officer or Tribal Court is not appealed within the time period set forth in this Subchapter, then that decision is final and conclusive, and is not subject to further review.
- (D) Any factual or legal issue that could have been, but that was not, raised in a written protest, Request for Refund, Request for Reconsideration, hearing or appeal pursuant, shall be deemed to have been waived by the taxpayer and to have been conclusively and finally decided for the Tax Year for which the issue could have been raised, and for all subsequent Tax Years.

[History] Ord. 387 (11/6/18); Ord. 362 (11/1/16); Ord. 342 (12/16/14).

\*Previously codified as 17-11.340.

**17-11.360 Sovereign Immunity.**

The sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, or by any action commenced pursuant to this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Senate, the Department, the Chief Financial Officer, the Tax Administrator, the Hearing Officer, all tribal officials, employees, any specialized professional with whom the Tribe has contracted under this Chapter, as to all actions taken in, or concerning, the administration or enforcement of this Chapter, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

[History] Ord. 362 (11/1/16); Ord. 342 (12/16/14).

\*Previously codified as 17-11.350.

***Subchapter IV – Repealer, Severability and Effective Date***

**17-11.370 Repealer.**

[Reserved]

[History] Ord. 362 (11/1/16).

\*Previously codified as 17-11.360.

**17-11.380 Severability.**

The invalidity of any section, clause, sentence, or provision of this Chapter shall not affect the validity of any part of this Chapter that can be given effect without such invalid part or parts.

[History] Ord. 362 (11/1/16); Ord. 342 (12/16/14).

\*Previously codified as 17-11.370.

**17-11.390 Effective Date.**

This Chapter is necessary for the preservation of the public health, safety and welfare, the ongoing support of Tribal government and local taxing districts and their existing functions and programs, and therefore shall take effect immediately.

[History] Ord. 362 (11/1/16); Ord. 342 (12/16/14).

\*Previously codified as 17-11.380.