

RESOLUTION NO. 120 -15
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

**A Resolution Adopting the Yavapai-Apache Nation Transaction Privilege Tax
and Licensing Act**

- WHEREAS:** The Yavapai-Apache Nation Tribal Council (“Council”) is authorized to represent the Yavapai-Apache Nation (“Nation”) and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation (“Constitution”) as provided under Article V(a) of the Constitution; and
- WHEREAS:** The Council, as the legislative body of the Nation, is authorized to take any and all actions necessary and proper for the exercise of its Constitutional powers and duties, including those powers and duties not enumerated, and all other powers and duties now or hereafter delegated to the Tribal Council, or vested in the Tribal Council through its inherent sovereignty, as provided under Article V (w) of the Constitution; and
- WHEREAS:** The Council is authorized to levy and collect taxes, duties, fees and assessments and to enact laws, ordinances and resolutions incidental to the exercise of its legislative powers as provided by Article V(j) and V (v), respectively, of the Constitution; and
- WHEREAS:** The Council is responsible for generating revenue in order to fund the costs of delivering the essential governmental services provided by the Nation to its tribal members and to others who enter within the jurisdiction of the Nation; and
- WHEREAS:** The Council has reviewed the proposed Yavapai-Apache Nation Transaction Privilege Tax and Licensing Act, a copy of which is attached to this Resolution as Exhibit A, and has determined that adoption of the Yavapai-Apache Nation Transaction Privilege Tax and Licensing Act will serve the best interests of the Nation.
- NOW THEREFORE BE IT RESOLVED** that the Yavapai-Apache Nation Tribal Council, in Council assembled, at which a quorum is present, hereby adopts as law the Yavapai-Apache Nation Transaction Privilege Tax and Licensing Act as set out in the document attached to this Resolution as Exhibit A.
- BE IT FURTHER RESOLVED** that the Yavapai-Apache Nation Transaction Privilege Tax and Licensing Act shall be effective immediately upon adoption of this Resolution; provided however that the Nation’s Treasurer is authorized to allow up to ninety (90) days after the approval of this Resolution to transition into compliance all businesses that the Treasurer determines require such transition.

BE IT FINALLY RESOLVED that the Chairman, and Vice-Chairwoman, or either of them, are hereby authorized to take such further action as deemed necessary to carry out the intent and purposes of this Resolution and to implement the Yavapai-Apache Nation Transaction Privilege Tax and Licensing Act.

CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on July 16 2015, by a vote of 6 6 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.


Thomas Beauty, Chairman

ATTEST:

Karla Reimer
Karla Reimer, Council Secretary

Approved as to Form:


Office of the Attorney General

EXHIBIT A

Yavapai-Apache Nation Transaction Privilege Tax and Licensing Act

July 16, 2015

**YAVAPAI-APACHE NATION TAX CODE
CHAPTER 3**

**THE YAVAPAI-APACHE NATION TRANSACTION PRIVILEGE TAX AND
LICENSING ACT**

TABLE OF CONTENTS

Section		Page
300	Policy and Purpose	1
301	Title	1
302	Definitions	1
303	Business Licenses	3
304	Imposition of Privilege Taxes	5
305	Administration	8
306	Effective Date	14

300	<p>POLICY AND PURPOSE</p> <p>It is the policy of the Yavapai Apache Nation ("YAN" or "Nation") to exercise its sovereign taxing powers for the benefit of the Nation and its people. This Chapter of the Nation's Tax Code is intended to fully exercise the legislative and taxing power of the Nation, acting through its governing body the Yavapai-Apache Nation Tribal Council ("Council" or "Tribal Council"), as authorized under the Constitution of the Yavapai Apache Nation and to provide important sources of revenue to be used to defray the Nation's costs of providing essential governmental services to all residents and persons within the jurisdiction of the Nation. Nothing in this Chapter shall be construed as a waiver of the Nation's tribal sovereignty or its sovereign immunity.</p>
------------	---

TITLE

This Chapter shall be known as and may be cited as the Yavapai-Apache Nation Transaction Privilege Tax and Licensing Act.

PART I

DEFINITIONS

Subject to context, purpose, and additional definitions as may be required in regulations implementing this Chapter or as set forth in other sections of this Chapter, doing or engaging in "Business" includes all activities or acts engaged in or caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, but not casual activities or sales. A casual activity or sale occurs when a person engages in an isolated transaction that is not conducted with such frequency or is not one of a series of activities as to be sufficient to consider the person as regularly engaged in the activity.

302

"Business" means, but is not be limited to, all businesses, regardless of how such Business is organized under law, whether an individual person, sole proprietorship, corporation, partnership or any other legal entity recognized by law as capable of engaging in business, located within or doing business within the Reservation. "Person" includes anyone engaged in business, including but not limited to, an individual person, business, sole proprietorship, corporation, partnership or any other legal entity recognized by law as capable of engaging in business (hereinafter 'Person'). As used in this Chapter, "Person" may also refer to the "taxpayer" liable for the payment of taxes under this Chapter. Businesses include, but are not limited to the following:

- a. A manufacturing or industrial concern.
- b. Wholesale merchants.
- c. Retail merchants including convenience stores.
- d. Automobile service stations or garages.
- e. A farming or agricultural operation making use of land within the Nation's Reservation.
- f. Retailers, wholesalers, manufacturers or any other business not located or having a place of business on the Reservation, but making sales and deliveries on the Reservation.
- g. A rooming house, trailer court or park, or mobile home park.
- h. A bar, cocktail lounge, restaurant, cafeteria, dining room, lunch counter, lunchroom, snack bar, soda fountain, catering service or similar establishment where articles of food or drink are sold for consumption on or off the premises.
- i. An airport and services in support of the operation and maintenance of aircraft. Aircraft shall include any fixed wing aerial platform for commercial including a remotely operated drone and or balloon.

302.1

"Engaging in business" means commencing, conducting, transacting, doing or continuing in business and also the exercise of corporate or franchise powers.

302.2	"Gross income" means the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both, and without any deduction on account of losses.
302.3	"Gross proceeds of sale" means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind, or losses, but cash discounts allowed and taken on sale shall not be included as gross income.
302.4	"Gross income" or "gross proceeds of sale" shall not be construed to include goods, wares or merchandise, or value thereof, returned by customers when the sale price is refunded either in cash or by credit, nor the sale of any article accepted as part payment on any new article sold, if and when the full sale price of the new article is included in "gross income" or the "gross proceeds of sale."
302.5	"Member" or "Member of the Nation" means an enrolled member of the Yavapai-Apache Nation".
302.6	"Reservation" means those lands within the exterior boundaries of the Yavapai-Apache Nation, any lands that are held in trust by the United States of America for the benefit of the Yavapai-Apache Nation or any of its members, both now and in the future, and any other land constituting "Indian country" within the meaning of 18 U.S.C. § 1151 or any successor provision.
302.7	"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property, for consideration.
302.8	"Sale at retail" or "retail sale" means a sale for any purpose other than resale in the form of tangible personal property.
302.9	"Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or is in any other manner perceptible to the senses. Stocks, bonds and other securities are intangible property, not tangible property.
302.10	"Taxpayer" means any person liable for any tax imposed by this Chapter.
302.11	"Treasurer" means the Treasurer/Finance Director of the Yavapai-Apache Nation or such person as the Nation's Council designates to carry out the duties of the Treasurer, and may include such subordinate official(s) as the Treasurer designates to carry out any provisions of this Chapter.

PART II: BUSINESS LICENSES

303.1 BUSINESS LICENSES

- A. Any Person engaged in any business located on the Reservation must obtain a business license from the Nation and pay the license fee provided in Section 303.6. In addition, any person engaged in any business, or otherwise participating in any part of a business transaction occurring on the Reservation, from a location outside the Reservation with the Nation, any department, program, agency, entity or enterprise of the Nation, or with any members of the Nation residing within the Reservation, must obtain a business license from the Nation and pay the license fee provided in Section 303.6.
- B. The license shall authorize the licensee to engage in the business described in the license in the location designated by the applicant for the license. If the licensee engages in business at more than one location on the Reservation, separate licenses shall be obtained for each location at which business is conducted. Licenses shall not be transferable.
- C. The fact that a Person has previously engaged in or is currently engaged in business on the Reservation or has otherwise held himself out as engaging in business on the Reservation, shall be conclusive evidence that such Person has submitted himself to the Jurisdiction of the Nation for all purposes under this Chapter, including, but not limited to the liability of such Person for the payment of the license fees and taxes as provided under this Chapter.

303.2 APPLICATION AND ISSUANCE

- A. Any Person desiring to engage in business within the Reservation shall submit a written application for a business license to the Treasurer on such form as approved by the Treasurer. The application shall include:
 - 1. A description of the business.
 - 2. The name and address of the owner or owners of the business.
 - 3. The trade name if any to be used by the business.
 - 4. The physical location of the business.
 - 5. Acknowledgment of receipt of a copy of this Chapter and liability for and payment of all applicable taxes and fees imposed under this Chapter, as it may be amended by the Council from time to time.
- B. A check, money order or cash, payable to the Nation, shall accompany each application in full payment of the business license fee provided for under Section 303.6.
- C. Upon approval of the application by the Treasurer and payment of the fee, a business license shall be issued to the applicant in such form as approved by the Treasurer.

303.3 ANNUAL RENEWAL

- A. **Annual Business License:** A business license, or any renewal thereof, shall be valid from the date of its approval through December 31 of the year of said approval. Thereafter the license shall, upon application and approval under this Section 303.3 be renewed on the first day of the subsequent year and said license must be renewed annually in order to remain effective.
- B. An annual application for renewal of the business license may be submitted by any Person desiring to continue engaging in business on the Reservation on such form as approved by the Treasurer, together with such renewal fee as is provided for under this Chapter.
- C. Upon approval of the application for renewal by the Treasurer, and payment of the renewal fee, a business license shall be issued to the applicant in such form as approved by the Treasurer.

303.4 ENGAGING IN BUSINESS WITHOUT A BUSINESS LICENSE

- A. A Person engaging in any business on the Reservation without a valid business license shall be notified in writing by the Treasurer of their liability for the business license fee and all applicable taxes, and said notice shall include an assessment for the amount of taxes due. The notice shall inform the party that no further business may be conducted on the Reservation until the party obtains a business license. The Person shall remain liable for the payment of all taxes that should have been collected and paid during the period in which business was engaged in business without a license until paid. No business license shall be issued until all such taxes are paid.
- B. In addition to the notice and assessment provided for under section 303.4A, if the Person continues to engage in business without a business license following receipt of the notice, a penalty of \$500 will be assessed.
 - 1. In addition to the monetary penalty provided under section 303.4 B, the Person continuing to engage in any business without a valid business license may be prohibited by the Treasurer from obtaining a business license for a period of one (1) year from the date of notice.
 - 2. The Treasurer, with the Assistance of the Nation's Attorney General, may petition the Nation's Tribal Court for injunctive and any other appropriate relief, including exclusion from the Reservation, against any Person who continues to engage in business on the Reservation after receipt of the Notice provided for under section 303.4A.
 - 3. "Notice" under this Chapter means actual delivery to the Person entitled to the Notice by any lawful means.
- C. If a Person engaged in business without a license is conducting such business on land leased by the Nation to a business required to have a license under this

Chapter, the Treasurer may impose a penalty of \$500 on the lessee and pursue any other remedies provided for under the lease.

303.5 COMPLYING WITH LAWS AND REGULATIONS

Any Person engaging in any business on the Reservation shall comply with all laws and regulations of the Nation. Any failure by said Person to comply with said law and regulations shall be cause to revoke that Person's business license.

303.6 LICENSE FEES

Every Person issued a business license shall pay an initial or renewal license fee as follows:

- | | |
|---------------------------------------|----------|
| 1. Initial Business License | \$100.00 |
| 2. Annual Renewal of Business License | \$ 50.00 |

The Treasurer retains discretion to waive these fees in limited circumstances where such a waiver is reasonable and appropriate.

303.7 REGULATORY LICENSE

If any other ordinance or law of the Nation requires a Person licensed under this Chapter to obtain a license or permit for regulatory purposes, no license under this Chapter shall be issued to that Person until the business has obtained the license or permit required by the other ordinance or law.

303.8 REVOCATION OF LICENSE

A. Licenses issued under the provisions of this Chapter may be revoked by the Treasurer for any of the following reasons:

1. Fraud, misrepresentation or incorrect statement contained in the application for the license or its renewal, and or, in the course of carrying on business.
2. Any violation of this Chapter, including, but not limited to, paying any taxes levied under this Chapter when due, or any other law or ordinance of the Nation.
3. Conviction of any crime.
4. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
5. Unconscionable and other unfair business practices and or abandonment of the business.

PART III: IMPOSITION OF PRIVILEGE TAXES

304. There is hereby levied and there shall be collected a privilege tax measured by the amount or volume of business transacted by any Person on account of their engaging in business on the Reservation, said tax to be measured by the gross proceeds of sales, gross income, or gross receipts of such Persons on such account, and all of said gross proceeds of sale, gross income, or gross receipts shall be used to measure the tax in accordance with the provisions in this Chapter. For purposes of this Chapter, the total amount of gross proceeds of sale, gross income, or gross receipts shall be deemed to be the amount received, exclusive of the taxes imposed by this Chapter. A Person who imposes an added charge to cover the tax being levied by this Chapter or which is identified as being imposed to cover the privilege tax shall not remit less than the amount so collected to the Treasurer.

304.1 GENERAL RETAIL SALES – RATES AND EXEMPTIONS

- A. For all general retail sales the tax rate shall be an amount equal to six percent (6%) of the gross proceeds of sale or gross income of the business of selling, leasing, renting or licensing any tangible personal property whatsoever at retail.
- B. The following sales are exempt from this general retail sales levy:
1. Sales of food for human consumption at home and from the sale of Tobacco Products as defined and taxed under the Nation's Tobacco Products Tax and Licensing Act; provided, however, that this exemption does not include sales of prepared food, which are taxable.
 2. Gross proceeds or gross income of activities specifically subject to tax pursuant to other statutory provisions of the Nation's tax laws, unless otherwise stated.
 3. Sales of tangible personal property to a person holding a valid business license for engaging in or continuing in the business of contracting when the property so sold is incorporated or fabricated by the contractor into any structure, project, development or improvement on the Reservation.
 4. Sales of tangible personal property made directly to the United States Government, its departments or agencies.
 5. Sales of tangible personal property for resale and not at retail or not to an ultimate consumer.
 6. Sales of tangible personal property to manufacturers, modifiers or assemblers where such property directly enters into and becomes an ingredient or component part of any manufactured, fabricated or processed article, substance or commodity for sale in the regular course of business.

7. Sales of tangible personal property made directly to the Nation, any department, agency, entity or enterprise wholly-owned by the Nation.
8. The sale of drugs on the prescription of a member of the medical, dental or veterinary profession who is licensed by law to prescribe such drugs.
9. Sales of tangible personal property by a church or by a charitable organization recognized as tax exempt under Section 501(c)(3) of the federal Internal Revenue Code and any successor provision.
10. Sales of livestock, cotton, cottonseed, wheat, barley, and hay.
11. Charges for actual freight costs incurred on the shipment of tangible personal property to the purchaser.
12. Sales of a motor vehicle to a Member of the Nation for the Member's personal use and not for resale, and/or sales of a mobile home to a Member of the Nation as a principal residence to be occupied on the Reservation and not for resale.

304.2 ALCOHOL SALES

- A. There is hereby levied and there shall be collected a privilege tax upon every Person engaging on the Reservation in the business of selling alcoholic beverages at retail, such tax being levied on the sale of alcoholic beverages in an amount equal to eight percent (8%) of the gross proceeds of sale or gross income of the business from such sales.
- B. An Alcohol Abuse Prevention Fund is hereby established in the Nation's Budget. The Treasurer shall deposit twenty-five percent (25%) of the revenues received under Section 304.2(A) into this Fund. Monies deposited into this Fund shall be appropriated by the Council as part of the Nation's annual budget process and used for social, educational and health care programs and projects, as determined by the Council and aimed at addressing alcohol abuse prevention and treatment and the social issues that stem from alcohol abuse within the Nation.

304.3 RESTAURANTS AND BARS

There is hereby levied and there shall be collected a privilege tax upon every Person engaging on the Reservation in the business of operating a restaurant and/or bar. The tax rate shall be an amount equal to six percent (6%) of the gross receipts from the business activity of preparing or serving food or nonalcoholic beverages for consumption on or off the premises, including also the activity of catering, upon every person engaging or continuing in the business of preparing or serving food or beverages in a bar, cocktail lounge, restaurant, cafeteria, dining room, lunch counter, snack bar, soda fountain, catering service or similar establishment where articles of food or drink are sold for consumption on or off the premises. Cover charges and minimum charges must be included in the gross income of this business activity. Gross receipts from the business activity of preparing or serving alcoholic beverages

for consumption on or off the premises shall be subject to tax under Section 304.2 rather than under this Section. The tax shall not apply to any gross receipts from preparing or serving food or nonalcoholic beverages at schools, hospitals, daycare facilities, elderly centers, jails or correctional facilities.

PART IV: ADMINISTRATION

305 ADMINISTRATION AND ENFORCEMENT

- A. Except as otherwise provided herein; all authority for administration and enforcement of this Chapter is vested in and shall be exercised by the Treasurer. In performing the duties assigned under this Chapter, the Treasurer may require the attendance of the taxpayer or of any other person having knowledge of any matter arising under this chapter and for such purposes may take testimony, require material proof, administer oaths, and issue subpoenas and subpoenas *duces tecum* signed by the Treasurer or such other person as the Treasurer may authorize, to be served on any person by any means ensuring actual notice. Failure by the taxpayer to respond to the Treasurer's subpoena may result in the revocation of the taxpayer's business license and may expose the taxpayer to further civil liability as provided under this Chapter or otherwise under the laws of the Nation.
- B. In any matter requiring the Treasurer to determine the tax liability of any Person under this Chapter (any matter where the Treasurer determines that a Person's tax liability is different than the tax liability stated in the periodic returns required to be filed by taxpayers under this Chapter), the Treasurer shall specify said liability on a written form that sets out the gross proceeds and taxes owed by the Person liable for the taxes, whether monthly or , and clearly set out the determination of tax liability. This written form shall constitute the Treasurer's Determination of Tax Liability and shall be subject to judicial review, as provided in Section 305.17B hereinbelow, in any case where the Person liable for the tax wishes to challenge the Treasurer's determination, following exhaustion by said person of all administrative remedies directly with the Treasurer as set out below in Section 305.17A.

305.1 PRESUMPTION THAT ALL GROSS PROCEEDS/INCOME/RECEIPTS ARE TAXABLE

- A. For the purpose of the proper administration of this Chapter and in order to prevent evasion of the tax, it shall be presumed that all gross proceeds of sales, gross income, and gross receipts are subject to the taxes levied under this Chapter until the contrary is established by the Person seeking an exemption from the tax.
- B. The burden of rebutting the presumption established under Section 305.1A is on the Person who makes the sale of tangible personal property unless said Person takes from the purchaser a certificate to the effect that the property was purchased for resale as provided under Section 304.1B(5) above.

305.2 OTHER PRESUMPTIONS

- A. The total amount of gross income, gross receipts or gross proceeds of sales shall be deemed to be the amount received, exclusive of the taxes levied by this Chapter. Gross income will include reference to the sale price exclusive of the tax levied and collected.
- B. Where the taxpayer fails to show any item on invoices to customers, sales slips or cash register slips, and on all applicable books and records, as not includable under this Chapter as gross income, gross receipts or gross proceeds, the taxpayer shall be liable for taxation on the full amount of gross income, gross receipts or gross proceeds without any allowance for such items.
- C. A certificate issued by the Treasurer of the mailing of any notice specified under the provisions of this Chapter, shall be prima facie evidence of the receipt of the same by the person to who said notice is addressed. Any period of time which is determined according to the provisions of this Chapter by the giving of notice shall commence to run from the date of mailing such notice.

305.3 MONTHLY RETURNS AND PAYMENT OF TAXES

The taxes levied under this Chapter shall be paid monthly unless otherwise expressly provided, or the taxpayer elects to pay them more frequently. The taxpayer shall, on or before the thirtieth (30th) day following the end of each calendar month, file a return with the Treasurer showing the gross amount of income, the taxable amount, and amount of the tax due for the preceding month. The taxpayer shall be required to use the form of return authorized by the Treasurer and on or before the due date shall mail or hand deliver the same, together with remittance for the amount of tax due, payable to the "Yavapai-Apache Nation," to the Treasurer or, if hand delivered, to the Treasurer, the Treasurer's designee, or any employee at the Treasurer's Office authorized to receive tax payments. The return shall be signed by the taxpayer or its authorized agent, and such signature shall be evidence that the person signing the return verifies the accuracy of the information supplied in the return under penalty of perjury. A remittance mailed in an envelope containing adequate postage and postmarked on or before the due date shall be considered to be timely even if not received until after the due date. If payment is made in any form other than the money which is legal tender of the United States of America, the tax obligation shall not be ended until the check, bank draft or money order has been honored by the person on whom drawn.

305.8 EXTENSION OF TIME TO FILE

The Treasurer may for good cause extend the date of making any return required by this Chapter, but the date for filing such return shall not extend more than thirty (30) days beyond the regular due date.

305.9 CIVIL PENALTIES

- A. If a taxpayer fails to make and mail or hand deliver the monthly privilege tax return by the date due, there shall be imposed a penalty of five percent (5%) of the tax due for each month or portion thereof for which the filing of the return remains

delinquent, up to a maximum of fifteen percent (15%), unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

- B. If a taxpayer fails to pay any tax shown or required to be shown on a return from the date upon which such payment shall have become due, there shall be imposed a penalty of ten percent (10%) of the tax due, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.
- C. If a taxpayer fails or refuses to file a return on notice and demand by the Treasurer, the Treasurer may assess a penalty of twenty-five percent (25%) of the tax, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. Such penalty shall be due and payable on notice and demand by the Treasurer.
- D. If a taxpayer fails or refuses to furnish any information requested in writing by the Treasurer, the Treasurer may assess a penalty of twenty-five percent (25%) of the amount of any assessed tax deficiency with respect to which the information was requested, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.
- E. If any part of a deficiency assessed by the Treasurer is due to negligence but without intent to defraud, the Treasurer may assess a penalty of ten percent (10%) of the amount of the deficiency which is due to negligence.
- F. If any part of a deficiency assessed by the Treasurer is due to fraud with intent to evade tax, the Treasurer may assess a penalty of fifty percent (50%) of the amount of the deficiency which is due to fraud.
- G. The penalties provided for in this Section are due on notice and demand by the Treasurer, are cumulative, and shall accrue interest from the date of assessment.
- H. The above stated civil penalties shall be in addition to any other remedy available to the Nation under this Chapter, or in law or equity, and not in lieu thereof. The Treasurer, with the Assistance of the Nation's Attorney General, may petition the Nation's Tribal Court for injunctive relief and any other appropriate relief, including exclusion from the Reservation, against any Person who continues to engage in business on the Reservation after receipt of notice and until such time as the taxes and penalties have been paid.

305.10 ABATEMENT OF PENALTIES

- A. If a taxpayer has been assessed a penalty under Section 305.9, the Treasurer, on written application of the taxpayer, shall abate the penalty if the Treasurer determines that the conduct, or lack of conduct, that caused the penalty to be imposed was due to reasonable cause and not due to willful neglect.
- B. If, before an assessment is issued, a taxpayer applies in writing requesting a waiver of any penalty that may be assessed under Section 305.9, the Treasurer shall not assess any part of the penalty with respect to which the Treasurer

determines that the conduct, or lack of conduct, that would cause the imposition of the penalty, was due to reasonable cause and not due to willful neglect.

305.11 INTEREST

Interest at the rate of one and one-half percent (1½%) per month or fraction of a month shall be assessed on any unpaid tax. Interest shall be compounded monthly and shall continue to accrue on all outstanding amounts until paid.

305.12 EXAMINATION OF BOOKS AND RECORDS

The Treasurer or such other person as may be authorized by the Treasurer, may make examination of any books, papers, records or other data bearing upon the correctness of any return. For the purposes of enforcing this Chapter, the Treasurer shall have the authority to conduct periodic audits of the business records of any Person subject to the taxes and fees levied or imposed under this Chapter. This authority extends to claims for refund and or protest filed by any taxpayer hereunder. Any written notice or subpoena from the Treasurer to any taxpayer requiring the taxpayer to produce records shall require that the records be produced by the taxpayer within thirty (30) days of receipt of the subpoena or notice.

305.13 BUSINESS RECORDS OF TAXPAYER

It is the duty of every person engaging in business on the Reservation for which a tax is imposed under this Chapter to establish, keep and preserve for a minimum of five (5) years suitable business records of the gross proceeds, gross income, gross receipts of sales, invoices, and all such related records, for all merchandise purchased and sold, resale certificates, and all other such books of accounts relating to the taxes for which such person is liable under the provisions of this Chapter. In addition, once an examination involving any Person has commenced under Section 305.12 of this Chapter, such Person must continue to keep and preserve the foregoing records until the conclusion of the examination, even if the five-year period described in the preceding sentence has expired.

305.14 INADEQUATE RECORDS

In the event the records of the gross proceeds, gross income, or of the gross receipts of sales of the business, kept by the taxpayer, are deemed by the Treasurer to be inadequate for purposes of enforcing this Chapter, or the taxpayer does not keep such other books or records as may be necessary to determine the amount of the tax for which taxpayer is liable under this Chapter, the Treasurer may prescribe by regulation the form and manner of keeping such books and records.

305.15 CORRECTION OF ERRORS, ETC.

If the taxpayer makes an error in computing the tax owed on the monthly return, the Treasurer shall correct the error and notify the taxpayer promptly by ordinary mail that the correction has been made. The correction shall constitute a Determination by the Treasurer of Corrected Tax Liability. Any additional tax for which the taxpayer becomes liable, plus penalty and interest, shall be payable within ten (10) days after the letter or form showing the correction is mailed to the taxpayer. If the taxpayer believes he has made any overpayment of tax, the

taxpayer may file a claim for refund in accordance with Section 305.16.

305.16 CLAIMS FOR REFUNDS

Claims for refund shall be filed in writing with the Treasurer within three (3) years after the date of filing of the return or two years after the date of payment of the tax, whichever period expires later, and shall identify the taxpayer by name, address, and business license number. Each claim shall set forth the amount of refund requested, the specific tax period involved, and the specific grounds upon which the claim is founded. In the case of any refund claim allowed by the Treasurer, such refund may be allowed in the form of a credit against tax due on future returns or cash, as the Treasurer determines.

305.17 ADMINISTRATIVE HEARING; COURT ACTION

- A. **Administrative Hearing.** In any matter in which a taxpayer disputes the Treasurer's Determination of Tax Liability, the taxpayer shall have forty-five (45) days from the issuance of said Determination within which to file with the Treasurer a written statement disputing the Determination and specifying the reasons supporting the taxpayer's belief that the Treasurer has made an incorrect determination of tax liability. The taxpayer's written statement shall be accompanied by copies of all records and documentation that the taxpayer relies on in support of the disputed tax determination. Within sixty (60) days of the Treasurer's receipt a taxpayer's written statement disputing the Treasurer's determination of Tax Liability, the Treasurer shall hold an administrative hearing at which the taxpayer filing the statement shall be given an opportunity to present all evidence, documents and testimony concerning the disputed Determination of Tax Liability and otherwise show cause why the determination is incorrect. Within thirty (30) days following conclusion of the administrative hearing and after considering all evidence, documents and testimony of the taxpayer presented at the hearing, the Treasurer shall issue to the taxpayer a Final Determination of Tax Liability setting forth the Treasurer's conclusions regarding taxpayer's tax liability.
- B. **Court Action.** If a taxpayer is dissatisfied with the Treasurer's Final Determination of Tax Liability following the hearing before the Treasurer and issuance by the Treasurer of a written Final Determination of Tax Liability under Section 305.17 above, and contingent on the taxpayer paying under protest all taxes then due, the taxpayer may file an action in the Nation's Tribal Court to recover tax payments made under protest. The filing of a court action shall be made by the taxpayer within sixty (60) days after the service of the Treasurer's Final Determination of Tax Liability. Failure by the taxpayer to file a court action within the required sixty-day period shall render any action filed after such date null and void and the Tribal Court shall have no jurisdiction to hear any such claim filed out of time and any further challenge to the Treasurer's Final Determination of Tax Liability shall be barred. The Tribal Court shall conduct a review of the Treasurer's decision with a judge sitting without a jury. Judicial review of the Treasurer's decision is limited to whether the tax liability was correctly assessed, if a refund is due, and if applicable, that the property lien has been properly applied.

- C. Settlement Conference. The Treasurer is authorized to engage in settlement discussions with any taxpayer where an action is pending in Tribal Court challenging the Treasurer's Final Determination of Tax Liability and may take reasonable measures to encourage settlement with the taxpayer where it is appropriate under the circumstances as determined by the Treasurer. Consideration by the Treasurer of a taxpayer settlement in excess of \$25,000 shall require approval by the Nation's Tribal Council.

305.18 TAX IS A LIEN; PROCEDURE

- A. The taxes levied under this Chapter, if not reported and paid by the due date specified by this Chapter, shall constitute a lien on the property of any person liable for the tax. This section does not limit the Treasurer and the Nation's Attorney General from pursuing additional civil remedies against the taxpayer's real, personal, and tangible property. This includes, but is not limited to, garnishment of bank accounts and wages for failing to report and pay taxes by the due date.
- B. The Treasurer shall give written notice of lien to the taxpayer at taxpayer's last known mailing address or at the address at which the business is conducted by certified or registered mail. The written notice shall indicate that the Nation will enforce a lien on the taxpayer's property unless the taxpayer reports and pays all tax, penalties, and interest past due under this Chapter, or provides satisfactory evidence to the Treasurer that no such amounts are due, within a period of thirty (30) days from service or receipt of said written notice.
- C. If the taxpayer does not pay amounts due or provide evidence that such amounts are not due within thirty (30) days after service or receipt of said written notice, or if the Treasurer considers it necessary to take immediate action in order to protect the value of the lien, the Treasurer shall file a "Notice and Claim of Lien" to perfect a lien. Such Notice and Claim of Lien shall be filed with the Nation's Tribal Court or such other office designated by the Nation's Tribal Council to perfect a lien against property located on the Reservation and in such other appropriate filing office to perfect a lien against property located outside the Reservation. Such liens, notice and claim, will be perfected in Tribal Court prior to pursuing the matter outside the Reservation. The Treasurer shall promptly send by certified or registered mail a copy of such Notice and Claim of Lien to the taxpayer at taxpayer's last known mailing address or at the address at which the business is conducted. The "Notice and Claim of Lien" shall contain the following:
1. A description of the property subject to the lien which is sufficient for identification.
 2. The name of the taxpayer as owner or reputed owner of the property.
 3. The amount of the delinquent tax, including penalties and interest, or if this amount cannot be determined precisely because suitable records

and books were not made available by the taxpayer, the amount assessed, including penalties and interest, by the Treasurer as authorized by this Chapter when such books and records are not available or are unsuitable.

- D. The Nation shall have the right to bring an action to enforce the lien in the Nation's Tribal Court or in any other court having jurisdiction over the property, but failure to enforce the lien by such action shall not affect its validity.

305.19 COLLECTION OF DELINQUENT TAXES

- A. If any tax imposed by this Chapter, or any portion thereof, is not paid within thirty days after the same becomes delinquent, the Treasurer, through the Nation's Office of Attorney General, shall be empowered to commence action in the Yavapai-Apache Tribal Court or any other court of competent jurisdiction to collect the tax, penalties and interest due, and to utilize any and all appropriate remedies, including a petition for injunctive relief enjoining the delinquent taxpayer from continuing to engage in business on the Reservation.
- B. Every tax imposed under this Chapter, and all increases, interest and penalties thereon, shall be, from the time the same is due and payable, a personal debt of the person liable to the Nation and it shall be payable to and recoverable by the Treasurer through any means available at law or in equity in any court of competent jurisdiction.
- C. If a Person liable to pay any tax under this Chapter neglects or refuses to pay the tax, the Treasurer, in addition to pursuing any other remedies available at law or in equity, may collect such tax, and such other sums as are sufficient to cover the expenses of the levy, by levy upon all property and rights to property belonging to the Person/taxpayer, on which there is a lien as provided in this Chapter, for the payment of the tax, as provided under Sections 305.17 to 305.19.

305.20 RULES AND REGULATIONS

The Treasurer is authorized to formulate rules and regulations and procedures necessary to the efficient enforcement of this Chapter, and when approved by the Tribal Council such rules, regulations, and procedures shall be binding upon and obeyed by all persons subject to this Chapter. A copy of all rules and regulations shall be furnished to any person subject to this Chapter upon request.

305.21 EFFECTIVE DATE

This Chapter 3, The Yavapai-Apache Nation Transaction Privilege Tax and Licensing Act, shall become effective immediately upon its approval by the Tribal Council, as set forth in a Resolution of the Tribal Council; provided that the Treasurer shall have authority to allow up to ninety (90) days after said approval to transition into compliance businesses that the Treasurer determines require such a transition.