

BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS

CHIEF BLACKBIRD CENTER

P.O. Box 39 • Odanah, Wisconsin 54861

PUBLIC NOTICE

Notice of Draft Code

The following Draft Code is posted for a public comment period on:
February 28, 2023

Title: Bad River Tribal Court Code Possessory Interest Tax – Real Property; Creating Section 6
– Chapter 428 – Possessory Interest Tax

relating to: a tax on possessory interests in real property

The comment period is 45 days, to April 14, 2023

A copy of the Draft Code can be obtained by sending a request to P.dax@badriver-nsn.gov or calling (715) 682-7111. Written comments can be submitted via Email, Regular US Mail or Delivery to:

Priscilla Dax
Executive Secretary
Attn: Draft Code Possessory Interest Tax
72682 Maple St
PO Box 39
Odanah, WI 54861
P.dax@badriver-nsn.gov

*** Public Meetings to receive comments on the Draft Code are scheduled on March 23, 2023 at 12:00 PM and 6:00 PM in the Convention Center Kakagon Room, Odanah, Wisconsin ***

Posted:

Bad River Tribal Court Code
Creating Section 6 - Chapter 428 - Possessory Interest Tax

relating to: a tax on possessory interests in real property

Sec. _____ Statement of Purpose

Pursuant to Article VI, Sections 1(m) and 1(n) of the Constitution, the Bad River Band of the Lake Superior Band of Chippewa Indians of the Bad River Reservation, Wisconsin exercises the primary responsibility for protecting and advancing the health and well – being of the members and non – members residing within Reservation Communities through delivery of essential governmental services and ensuring and fostering the arts, crafts, traditions, culture, wildlife and natural resources of the Band.

To support this responsibility, the Band adopts in this Chapter a possessory interest tax on real property, which will provide the Band with a portion of the revenues necessary to fund essential governmental services and arts, crafts, traditions, culture, wildlife and natural resources.

Sec. _____ Short Title

The tax levied by this Chapter shall be called the "Possessory Interest Tax" on Real Property.

Sec. _____ Definitions

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Tax means the tax, and any interest, penalty, or costs, assessed or imposed pursuant to this Code.

Sec. _____ The Tax Cycle.

The tax rate and the approaches to determine the appraised value (i.e., the Tax Base) of the Possessory Interest shall remain constant for a two-year tax cycle. The initial tax cycle of this Chapter commences with the effective date of this Chapter and terminates on December 31, 2023.

Thereafter, the tax cycle shall take a full two-year period ending the last day in December of the odd – numbered years.

Sec. _____ Imposition and Rate of Tax

The Possessory Interest Tax set forth herein shall be imposed on the ownership of possessory interest in real property on January 1st of each taxable year and shall be assessed at the percent of the assessed value of the possessory interest as determined by publicly available information and taxpayer report pursuant to the following:

Rate of 5 percent Lakeshore

Rate of 1 1/2 percent Residential Not Lakeshore

Rate of 1 1/2 percent Forest Resident Owner

Rate of 5 percent Forest Absent Owner

Sec. _____ Reporting Requirements

(a) Each taxpayer shall comply with the following reporting requirements and such other requirements as are by rules or regulations adopted by the Council:

Forms. The Council shall provide taxpayers with forms for the reporting of the value of all possessory interests to the Band. Information reported by the taxpayer on these forms shall be the basis for assessment of tax due.

Reporting Date. Each taxpayer shall report the value of its possessory interests by December 15th of the taxable year.

Failure to Report, Administrative Valuation. If a taxpayer fails to file substantially complete possessory interest tax reporting information, or to otherwise provide requested information or documents within its possession or control which are relevant to an assessment of the extent or value of its possessory interests, the Council may proceed to assess the value of the taxpayer's possessory interests and to assess taxes. This assessment will be binding on the taxpayer unless it shows that the valuation, on the basis of the best information available to the Council, was clearly erroneous or unless the Council for other good cause shown relieves the taxpayer from the operation of this Section.

Reporting Value of Exemption Interests. No taxpayer or entity shall be required to file property valuation forms for any possessory interest which has a credit under Section _____.

Administrative Reports. Report all possessory interest tax activities and collections shall be made at least annually.

Sec. _____ Notice of Assessment and Payment of Taxes Due

The assessed tax shall be paid within 45 days of the date of mailing notice, unless another date is specified by the Council in the notice of assessment. Any taxes assessed shall be paid by check or money order made payable to the Bad River Band of the Lake Superior Band of Chippewa Indians of the Bad River Reservation, Wisconsin.

Sec. _____ Method of Claiming Exemption

Any taxpayer owning both taxable possessory interests and Federal Self – Determination Funding interests shall file with the Council an Exemption. The Exemption shall be filed on the form provided by the Council and at the time of filing the valuation reports required by Section _____, and shall be accompanied by a map clearly indicating the specific property for the Exemption.

Sec. _____ Appeal Procedures for Protested Taxes

The Tribal Court shall be the exclusive forum to obtain review of any dispute arising under this Code, including but not limited to, challenges relating to the Band's jurisdiction and the assessments made. The taxpayer shall have the right to contest any assessment with competent evidence.

Sec. _____ Collection Powers

The Council shall have full power to collect taxes and penalties assessed, including the power to file suit in Tribal Court, and to execute on any judgment by appropriate legal remedies including attachment and seizure of the real property for any delinquent, willful misrepresentation or act of fraud which results in underpayment of any tax. The procedures for enforcement are set forth in Chapter 401 Section 401.7.

Sec. _____ No Waiver of Sovereign Immunity

Nothing in this Chapter shall constitute a waiver of sovereign immunity.

Sec. _____ Severability

If any part or application of this Chapter is held invalid, the remainder of the Chapter or its application to other situations or taxpayers shall not be affected.

Sec. _____ Use of Tax Proceeds

The use of proceeds shall be approved by the Council toward providing essential governmental purposes and arts, crafts, traditions, culture, wildlife and natural resources.

Sec. _____ Amendment

This Chapter may be amended by the Council in accordance with the Constitution.

Sec. _____ Effective Date

This Chapter shall be effective on the date of its adoption by the Council, if applicable subject to review by the Secretary pursuant to the Constitution.

Sec. _____ Conflict with Other Applicable Law

In the event of a conflict between provisions of this Code and any other provision of applicable law that by its terms is applicable to taxation, this Code shall supersede and be controlling.

Legislative History:

Current non – member residential and commercial activities require the delivery of necessary emergency services; and result in non – point and point source discharges to Waters in the Watershed, effecting the health and welfare, economic security or political integrity of the Band pursuant to *Montana v. United States, 450 U.S. 544 (1981)*.

Notice of Draft Code Posted:

Bad River Tribal Court Code

Section 6 – Chapter 401 - Trespass to Land

Section 401.1 – Findings and Purposes.

A. The Tribal Council finds that –

- 1. The Tribe possesses the inherent sovereign power to exclude unauthorized persons and entities from its lands; and**
- 2. The adoption of a trespass to land ordinance will strengthen Tribe sovereignty.**

B. Purposes.

The purposes of this ordinance are to strengthen Tribe sovereignty and protect its right to exclude unauthorized persons from the tribal lands.

Section 401.2 – Authority.

The Tribal Council enacts this Ordinance pursuant to its inherent sovereign authority and its authority under Art. VI, Sections 1(j),¹ and (s)² of the Tribe's Constitution.

Section 401.3 – Definitions.

As used in this Act:

“Parcel” means a tract of Tribal land as described in a deed or other instrument recorded with the Bureau of Indian Affairs or Ashland County, Wisconsin.

“Person” includes a natural individual, partnership, corporation, association, other legal or fiduciary entity, and a public entity.

“Tribal court” means the Bad River Tribe of Lake Superior Chippewa court.

“Tribal land” means any tract, or interest therein, in which the surface estate is owned in whole or part by the Tribe in trust or restricted status, including the surface estate of lands held by the

¹ “(j) To regulate by enactment of ordinances the conduct of business within the exterior boundaries of the Bad River Reservation including the power to impose taxes and license fees upon members and non-members during business within the Bad River Reservation.”

² “(s) To exclude from the restricted lands of the reservation, persons not legally entitled to reside thereon, under ordinances which shall be Subject to review by the Secretary of the Interior.”

United States in trust for a corporation chartered by the Tribe under section 17 of the Indian Reorganization Act, 25 U.S.C. § 5124), or in fee simple status within the Reservation.

“Tribe” means the Bad River Tribe of Lake Superior Chippewa Indians.

Section 401.4 - Civil Trespass.³

- A. A person commits civil trespass who intentionally and without the Tribe’s consent -
1. Enters tribal land or causes a thing or a third person to do so, or
 2. Remains on Tribal land, or
 3. Fails to remove from tribal land a thing which he is under a duty to remove.
- B. In any action to enforce this ordinance, the defendant shall bear the burden of proof on the issue of consent.

Section 401.5 - Failure to Remove Thing Placed on Tribal Land.⁴

A trespass is committed by the continued presence on tribal land of a structure, chattel, or other thing which the actor or his predecessor in legal interest has placed on the land pursuant to a license or other privilege if the actor fails to remove it after the privilege has been terminated by the accomplishment of its purpose or otherwise.

Section 401.6 Separate Acts of Trespass

A separate violation of this ordinance is committed with respect to each parcel of land on which a trespass is committed under Sections 401.4 and 401.5.

Section 401.7 - Remedies.

A. Civil Penalties and Sanctions.

A person found liable for trespass under this ordinance is subject to the following civil penalties and sanctions for each act of trespass:

1. Federal common law remedies, including ejectment, accounting for rents and profits and damages;⁵

³ Based on Restatement of Torts Second, § 158 “Liability for Intentional Intrusions on Land.”

⁴ Based on Restatement of Torts Second, § 160 “Liability for Intentional Intrusions on Land.”

2. Subject to the Indian Civil Rights Act, a fine not to exceed the greater of
 - a. \$5000 for each day that a trespass occurs; or
 - b. Three times the property taxes due under Section 6, Chapter 427; and
 - c. Immediate removal, at the trespassers expense; and
 - d. Damages equal to the costs of removal.

B. Disposition of Property on Tribal Land in Violation of Ordinance

The Tribe shall have the right to seize, hold and exclude the owner from using property that the Tribe determines has been intentionally placed or left on tribal land in violation of this ordinance.

At the conclusion of legal proceedings, the Tribe shall:

1. In the event of a judgment of no liability, return the property to the defendant as ordered by the court;
2. Continue to hold and exclude the defendant from using the property pending the defendant's payment in full of any fines, damages or costs imposed by the court;
3. In the event the defendant fails, within 90 days, to pay in full any fines, damages or costs imposed,
 - a. Sell the property and credit the proceeds against the judgment; or
 - b. Assume ownership of the property and credit its value, as determined by the court, against the judgment, provided that if the value of the property exceeds the judgment, the Tribe shall pay the excess to the defendant.

Section 401.8 – Enforcement.

- A. Tribal Conservation Enforcement Officers may execute this ordinance and serve warrants and processes issued by the Tribal Court; or
- B. The Tribal Attorney may enforce this ordinance by initiating a civil complaint in the Tribal Court.

Section 401.9 Jurisdiction

The Tribal Court shall have exclusive jurisdiction to enforce this ordinance.

Legislative History

Adopted by Resolution # 5-15-18-1029, replacing Section 5 – Chapter 300 – Conservation General Provisions – Section 300.02 – Trespass.

Corrections have been made and incorporated into the published Section 6 – Chapter 401 – Trespass to Land on November 20, 2019:

Adding reference to the Indian Civil Rights Act in Section 401.7.A.2 to make clear that the federal law applies.