

current



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

# Oneida Tribe of Indians of Wisconsin, Inc.



UGWA DEMOLUN YATEHE  
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the Colony of Pennsylvania, a new nation, the United States was made possible.

Oneida  
ROUTE 1



Wisconsin  
54155

Resolution No. 3-15-76-A  
Date Enacted 3-15-76  
Subject Matter \_\_\_\_\_

## RESOLUTION NO.

### ONEIDA TOBACCO ORDINANCE

WHEREAS, the Oneida Tribal Business Committee is the duly constituted governing body of the Oneida Tribe of Indians of Wisconsin of the Oneida Indian Reservation, and

WHEREAS, under the Constitution and By-Laws of the Tribe, the Oneida Tribal Business Committee is charged with the duty of protecting the health, security and general welfare of the Oneida Tribe of Indians of Wisconsin, and

WHEREAS, by virtue of their status as an Indian Tribe, the Oneida Tribe of Indians of Wisconsin are authorized by federal law to possess unstamped cigarettes and other tobacco products on the Oneida Indian Reservation and to regulate their sale and distribution, and

WHEREAS, the Oneida Tribal Business Committee deems it essential to the health, security and general welfare of the Oneida Tribe of Indians of Wisconsin to enact a comprehensive tobacco ordinance regulating sale and distribution of cigarettes and other tobacco products and levying an excise tax upon their distribution on the Oneida Indian Reservation, and

WHEREAS, the Oneida Tribal Business Committee wishes to clarify all of the ramifications and benefits of the following Oneida Tobacco Ordinance,

NOW, THEREFORE, the Oneida Tribal Business Committee does hereby promulgate and enact the following tobacco ordinance.

### AN ORDINANCE

Governing sale, distribution and  
taxation of tobacco products  
within the Oneida Indian  
Reservation

Section 1. Title.

This ordinance shall be known as the Oneida Tobacco Ordinance.

Section 2. Definitions.

As used in this ordinance, the following words and phrases shall each have the designated meaning unless a different meaning is expressly provided or the context is clearly indicated:

(a) "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin of the Oneida Indian Reservation.

(b) "Committee" shall mean the Oneida Tribal Business Committee

(c) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(d) "Tobacco Products" shall mean cigarettes, cigars, smoking tobacco, snuff, chewing tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking.

(e) "Taxable Event" shall mean the sale, use, consumption, handling, possession or distribution of each tobacco product.

(f) "Retail Selling Price" shall mean the ordinary, customary or usual price paid by the consumer for each tobacco product, less the tax levied by this ordinance.

(g) "Wholesale Distribution Price" shall mean the price paid for each tobacco product by the Tribe together with all freight charges and other expenses incurred by the Tribe in their receipt and distribution.

(h) "Tobacco Outlet" shall mean a licensed tribal retail sales business selling tobacco products on trust land within the Oneida Indian Reservation.

(i) "Operator" shall mean an enrolled member of the Oneida Tribe of Indians of Wisconsin licensed by the Tribe to manage a tobacco outlet.

### Section 3. Establishment of Tobacco Outlets.

The Committee shall establish one or more tobacco outlets within the Oneida Indian Reservation as the Oneida Tribal Business Committee in its sole discretion deems necessary to provide adequate service to consumers of cigarettes and tobacco products.

### Section 4. Nature of Outlet.

Each tobacco outlet established hereunder shall be a tribal tobacco outlet and shall be managed for the Tribe by an operator pursuant to a license granted by the Oneida Tribal Business Committee hereunder, and shall also be managed pursuant to a Federal Indian Trader's License as provided in Section 7 hereof.

### Section 5. Application for Tobacco Outlet License.

Any enrolled member of the Oneida Tribe of Indians of Wisconsin may apply upon an application form provided by the Oneida Tribal Business Committee for a tobacco outlet license. The application shall state the name and address of the applicant and shall be signed by the applicant under oath.

### Section 6. Tobacco Outlet License.

Upon approval of an application, the Oneida Tribal Business Committee shall issue the applicant a tobacco outlet license for a five-year period which shall entitle the operator to establish and maintain one tobacco outlet on the Oneida Indian Reservation. The license shall be renewable in such manner as the Oneida Tribal Business Committee shall prescribe and shall be nontransferable.

### Section 7. Trader's License.

No tobacco outlet license shall be issued to an operator until he has obtained a Federal Indian Trader's License from the Superintendent of the Great Lakes Indian Agency. Revocation of the Federal Indian Trader's License shall be grounds for revocation of the operator's tobacco outlet license.

### Section 8. Excise Tax Imposed.

There is being levied and there shall be collected as hereinafter provided, a tax upon the sale, use, consumption, handling, possession or distribution of all cigarettes in the amount of three cents per package. The Oneida Tribal Business Committee may levy an additional tax upon the distribution of cigarettes and other tobacco products as it deems desirable. The excise tax levied hereunder shall be a tax upon distribution of cigarettes and other tobacco products by the Tribe only and shall not constitute an

assessment or license fee upon enrolled members of the Tribe doing business within the reservation or obtaining special rights or privileges.

The excise tax levied hereunder shall be first a tax upon distribution of cigarettes and other tobacco products by the Tribe pursuant to Section 10 of this ordinance; provided, however, that failure to pay the tax at the time of such distribution shall not prevent tax liability from arising by reason of another taxable event. The excise tax levied hereunder shall be added to the retail price of tobacco products sold to the ultimate consumer.

Section 9. Purchase by Tribe.

All tobacco products purchased by the Tribe pursuant hereto shall be purchased with federally-restricted tribal funds, from legitimate tobacco dealers.

Section 10. Wholesale Distribution.

Wholesale distribution of tobacco products by the Tribe to a tobacco outlet shall be upon a cash basis for the wholesale distribution price which shall have added to it the excise tax levied in Section 8 hereof.

Section 11. Tobacco Products Federally Restricted Tribal Property.

The entire stock of tobacco products distributed hereunder shall remain federally-restricted tribal property owned and possessed by the Tribe until sale to the ultimate consumer. Payment by the operator of the wholesale distribution price plus the excise tax as provided in Section 10 hereof shall entitle the operator to custody of distributed tobacco products for sale to the ultimate consumer, at the operator's sole risk in the event of any loss whatsoever.

Section 12. Remuneration to Operator.

As remuneration for managing a tobacco outlet, an operator shall be entitled to the gross revenue derived from sale of tobacco products distributed hereunder in excess of the wholesale distribution price and the excise tax levied hereunder.

Section 13. Restricted Sales to Non-Indians.

An operator may not sell more than three cartons of cigarettes per sale to a non-Indian. The Council may restrict sales of other tobacco products to non-Indians as it deems necessary.

Section ]4. Restricted Sales to Minors.

An operator may not sell any tobacco products to any person under the age of ]8 years.

Section ]5. Other Business by Operator.

An operator may conduct another business simultaneously with managing a tobacco outlet for the Tribe. The other business may be conducted on the same premises and the operator shall not be required to maintain separate books of account for the other business.

Section ]6. Tribal Immunity--Liability--Credit.

An operator shall not attempt or be authorized to waive the sovereign immunity of the Tribe from suit, nor shall such operator attempt or be authorized to create any liability on behalf of the Tribe or to utilize tribal credit.

Section ]7. Operating Without License.

No enrolled member shall operate a tobacco outlet on the Oneida Indian Reservation without having in effect a valid tobacco outlet license issued pursuant hereto. This ordinance is not intended to prohibit retail sales of tobacco products by other than enrolled members; however, there shall be no wholesale distribution of tobacco products by the Tribe to any person not holding a valid tobacco outlet license as provided herein.

Section ]8. Purchases.

An operator shall purchase all tobacco products sold in his tobacco outlet from the Tribe.

Section ]9. Liability Insurance.

An operator shall maintain liability insurance upon his premises in the sum of \$]00,000.

Section 20. Revocation of Tobacco Outlet License.

Failure of an operator to abide by the requirements of this ordinance and any additional requirement imposed by the Oneida Tribal Business Committee will constitute grounds for revocation of the operator's tobacco outlet license as well as enforcement of the remedies provided in Section 2] below.

Section 2]. Violation--Remedies.

Upon application by the Chairman of the Oneida Tribal Business Committee, the Tribal Secretary shall issue an order directing the Oneida Tribal Business Committee to seize all tobacco products from wherever purchased and by whomever owned from any tobacco outlet being operated in violation of this ordinance. Within three days of such seizure, after adequate notice to the operator of such outlet, a hearing shall be held with the Oneida Tribal Business Committee at which time the operator of such outlet shall be given an opportunity to present evidence in defense of his activities. If the Oneida Tribal Business Committee shall determine by a preponderance of the evidence that such tobacco outlet was being operated in violation of this ordinance, the Oneida Tribal Business Committee shall impose a penalty of not less than a one-week shut down of operation nor more than four weeks shut-down of operation in addition to the forfeiture of tobacco products described above.

Section 22. Recovery of Taxes Owed.

The Tribe shall have a cause of action in Federal Court by the Oneida Tribal Business Committee to recover any taxes owed and not paid to the Tribe in accordance with this or any previous ordinance

Section 23. Separability.


If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances is not affected.

ONEIDA TRIBAL BUSINESS COMMITTEE

Chairman



THE FOREGOING RESOLUTION was adopted at a *Regular* meeting held on *May 10, 1976* at which time *8* Council members were present, and was passed by a vote of *6* FOR and *1* AGAINST, the Chairman, or the Vice Chairman in the Chairman's absence, being authorized to sign the Resolution.

  
Secretary