CHAPTER 16

Catawba Indian Claims Settlement Act

**SECTION 27‑16‑10.** Short title.

 This chapter is known as “The Catawba Indian Claims Settlement Act”.

HISTORY: 1993 Act No. 142, Section 1.

Federal Aspects

Federal law regarding Indians, see 25 U.S.C.A. Sections 1 et seq.

Power of Congress to regulate commerce with Indians, see US Const Art 1 Section 8, cl 3.

Library References

Indians 10.

Westlaw Topic No. 209.

**SECTION 27‑16‑20.** Legislative findings.

 The Legislature finds:

 (1) The Catawba Indian Tribe has filed lawsuits in both the United States District Court for the District of South Carolina, claiming possessory rights to certain lands in South Carolina and trespass damages and in the United States Court of Federal Claims seeking monetary damages against the United States.

 (2) The pendency of these lawsuits has resulted in severe economic and social hardships for large numbers of landowners, citizens, and communities in the State, and therefore for the State as a whole. If these claims are not resolved, further litigation involving tens of thousands of landowners would be likely.

 (3) The Indian claimants and the State, acting through the Governor, have reached an agreement in principle to settle their differences which constitutes a good faith effort on the part of all parties to achieve a fair and just resolution of claims which, in the absence of this settlement, could be pursued through the courts for many years to the detriment of the State and all its citizens, including the Indians.

 (4) The implementation of the settlement requires legislation by the Congress of the United States and by the General Assembly of South Carolina.

HISTORY: 1993 Act No. 142, Section 1.

NOTES OF DECISIONS

In general 1

1. In general

Absent establishment of a tribal court, all civil actions involving internal matters of Indian tribe were required, pursuant to Settlement Agreement entered into between the tribe, the United States, and South Carolina, and its implementing federal and state legislation, to be brought in South Carolina courts, and therefore federal court lacked jurisdiction in action brought by individual members of tribe alleging that tribal leadership was acting improperly in its control over tribal assets and affairs; selection of state forum to handle intra‑tribal disputes was an exercise of tribe’s sovereign power. Wade v. Blue (C.A.4 (S.C.) 2004) 369 F.3d 407. Courts 513

**SECTION 27‑16‑30.** Definitions.

 As used in this chapter:

 (1) “Catawba Claim Area” means that area of approximately one hundred forty‑four thousand acres in York, Lancaster, and Chester Counties claimed by the Catawba Tribe under the Treaty of Pine Tree Hill in 1760 and the Treaty of Augusta in 1763, and surveyed by Samuel Wylie in 1764, and ceded by the Catawba Indian Tribe to South Carolina by the Treaty of Nation Ford in 1840.

 (2) “Catawba Indian Tribe”, “Catawbas”, or “Tribe” means the Catawba Indian Tribe of South Carolina as constituted in aboriginal times, which was party to the Treaty of Pine Tree Hill in 1760 as confirmed by the Treaty of Augusta in 1763, which was party also to the Treaty of Nation Ford in 1840, and which was the subject of the Catawba Indian Tribe of South Carolina Division of Assets Act, enacted September 29, 1959, codified at 25 U.S.C. Sections 931‑938, and all predecessors and successors in interest, including the Catawba Indian Tribe of South Carolina, Inc.

 (3) “Claim” or “Claims” means a claim which was asserted by the plaintiffs in either suit, and any other claim which could have been asserted by the Catawba Indian Tribe or a Catawba Indian of a right, title, or interest in property, to trespass or property damages, or of a hunting, fishing, or other right to natural resources, if the claim is based upon aboriginal title, recognized title, or title by grant, patent, or treaty, including the Treaty of Pine Tree Hill of 1760, the Treaty of Augusta of 1763, or the Treaty of Nation Ford of 1840.

 (4) “Executive Committee” means the body of the Catawba Indian Tribe of South Carolina composed of the Tribe’s executive officers as selected by the Tribe in accordance with its constitution.

 (5) “Existing Reservation” means that tract of approximately six hundred thirty acres conveyed to the State in trust for the Tribe by J.M. Doby on December 24, 1842, by deed recorded in York County Deed Book N, pages 340‑341.

 (6) “Federal implementing legislation” means all appropriate federal legislation necessary to enact and effect the terms, provisions, and conditions of the Settlement Agreement.

 (7) “General Council” means the membership of the Tribe convened as the Tribe’s governing body for the purpose of conducting tribal business pursuant to the Tribe”s constitution.

 (8) “Internal Matters” or “Internal Tribal Matters” are matters which include, but are not limited to, the relationship between the Tribe and one or more of its members, the conduct of Tribal government over members of the Tribe, or the Tribe’s exercise of the power to exclude individuals from its Reservation.

 (9) “Member” means individuals who are members of the Tribe as determined in accordance with the federal implementing legislation.

 (10) “Reservation” or “expanded reservation” means the existing reservation and lands added to the Existing Reservation pursuant to the federal implementing legislation which will be held in trust by the Secretary.

 (11) “Secretary of the Interior” or “Secretary” means the Secretary of the Department of the Interior or his designee, and “Department” or “Department of the Interior” refers to the United States Department of the Interior.

 (12) “Settlement Agreement” means the written “Agreement in Principle” reached between the State and the Tribe and attached to the copy of the act enacting this chapter signed by the Governor and filed with the Secretary of State.

 (13) “State Government” or “State” means South Carolina.

 (14) “Suit” or “Suits” means Catawba Indian Tribe of South Carolina v. State of South Carolina, et al., docketed as Civil Action No. 80‑2050 and filed in United States District Court for the District of South Carolina; and Catawba Indian Tribe of South Carolina v. The United States of America, docketed as Civil Action No. 90‑553L and filed with the United States Court of Federal Claims.

 (15) “Termination Act” means the “Catawba Indian Tribe Division of Assets Act,” enacted September 21, 1959, 73 Stat. 592, 25 U.S.C. Section 931‑938.

 (16) “Transfer” includes, but is not limited to, a voluntary or an involuntary sale, grant, lease, allotment, partition, or other conveyance; a transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and an act, an event, or a circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources.

 (17) “Tribal Trust Funds” means those funds set aside in trusts established by the Secretary for the benefit of the Tribe and its members pursuant to the federal legislation implementing the Settlement Agreement.

HISTORY: 1993 Act No. 142, Section 1.

Library References

Indians 10.

Westlaw Topic No. 209.

**SECTION 27‑16‑40.** Catawba Tribe subject to jurisdiction of state, except where otherwise expressly provided.

 The Catawba Tribe, its members, lands, natural resources, or other property owned by the Tribe or its members, including land, natural resources, or other property held in trust by the United States or by any other person or entity for the Tribe, is subject to the civil, criminal, and regulatory jurisdiction of the State, its agencies, and political subdivisions other than municipalities, and the civil and criminal jurisdiction of the courts of the State to the same extent as any other person, citizen, or land in the State, except as otherwise expressly provided in this chapter or in the federal implementing legislation.

HISTORY: 1993 Act No. 142, Section 1.

Library References

Indians 5, 10.

Westlaw Topic No. 209.

**SECTION 27‑16‑50.** Monetary payments by state, federal governments; private payments; Trust Funds; limited waiver of immunity by state as to suit to collect; effect on certain other funding.

 (A) The General Assembly recognizes and acknowledges that the Settlement Agreement requires payment to the Catawba Indian Tribe of fifty million dollars of which thirty‑two million dollars is to be contributed by the federal government. The State shall contribute twelve million, five hundred thousand dollars toward the settlement, which must be paid in five annual payments in the amount of two million, five hundred thousand dollars. The State’s initial annual payment must be made within ninety days after the effective date of the implementing legislation, and the State’s annual payments continue on the same day and month for four consecutive years, or at the option of the State, the remaining balance of the contribution may be paid in full at any time within five years of the effective date of this chapter.

 (B) The State Treasurer shall collect all local and private contributions to settlement and forward them to the Secretary.

 (C) Upon completion of all payments into the Trust Funds created by the federal implementing legislation and the Settlement Agreement, at least one‑third of all state, local, and private contributions must be paid into the Education Trust Fund.

 (D) Private payments made pursuant to Section 5.2 of the Settlement Agreement may be treated at the election of the taxpayer as either a payment in settlement of litigation or a charitable contribution for state income tax purposes.

 (E) If the State’s contribution of twelve million, five hundred thousand dollars, or any part of it, is not paid as scheduled, the Tribe, or the United States on behalf of the Tribe, has a cause of action against the State for the amount not paid when due. Suit on this cause of action may be brought, at the election of the Tribe, in the Court of Common Pleas of South Carolina or in the United States District Court for the District of South Carolina. Until the entire twelve million, five hundred thousand dollars is paid, the State waives any Eleventh Amendment immunity which may bar a suit in the United States District Court for the District of South Carolina, but this waiver applies only to the cause of action referred to in this subsection.

 (F) None of the funds, assets, or income from the Tribal Trust funds may at any time be used as a basis for denying or reducing funds to the Tribe or its members under federal, state, or state funded local program, and distributions from the Tribal Trust Funds may be used as matching funds for other state, local, or federal grants or loans.

HISTORY: 1993 Act No. 142, Section 1.

Library References

Indians 10.

States 123.

Westlaw Topic Nos. 209, 360.

C.J.S. States Sections 377 to 380.

**SECTION 27‑16‑60.** Ratification of transfer extinguishes other claims by or on behalf of Tribe; State law to govern transfer of property.

 (A) Any transfer of land or other natural resources located anywhere within the State, from, by, or on behalf of the Tribe including, but without limitation, a transfer pursuant to a treaty, compact, or statute of any state, is deemed to have been made in accordance with the laws of the State.

 (B) Any transfer of land or other natural resources located anywhere within the State from, by, or on behalf of a member of the Tribe or a person purporting to be a member of the Tribe including, but without limitation, a transfer pursuant to a treaty, compact, or statute of a state, is deemed to have been made in accordance with the laws of the State.

 (C) By virtue of the approval and ratification of any transfer of land or natural resources affected by this section, all claims under a statute or the common law of a state against the United States, a state or subdivision of the United States, or another person or entity, by the Tribe, any of its members or any person purporting to be a member, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the transfer and based on any interest in or right involving the land or natural resources, including without limitation claims for trespass damages, claims for use and occupancy, or claims for damages to property, are deemed extinguished as of the date of the transfer.

 (D) Nothing in this section affects, diminishes, or eliminates the personal claim of an individual Indian which is pursued under a law of general applicability that protects non‑Indians as well as Indians.

HISTORY: 1993 Act No. 142, Section 1.

Library References

Indians 10, 15(1).

Westlaw Topic No. 209.

**SECTION 27‑16‑70.** Tribal court of criminal jurisdiction; delineation of Tribal and state jurisdiction; Tribal peace officers; training; cross‑deputization.

 (A) Except as provided in this section, South Carolina shall exercise exclusive jurisdiction over all crimes under the statutory or common law of this State.

 (B) A constitution adopted by the Tribe may provide for a tribal court with criminal jurisdiction.

 (1) If a tribal court with criminal jurisdiction is created, the territorial jurisdiction of the court both original and appellate must be limited to the Reservation; the jurisdiction of the court over persons must be limited to members of the Tribe; and the subject matter jurisdiction of the court is limited to crimes within the jurisdiction of the state magistrates’ courts and to any additional misdemeanors and petty offenses specified in the ordinances or laws adopted by the Tribe. The fines and penalties for the offenses may not exceed the maximum fines and penalties that a state magistrate’s court may impose.

 (2) In all cases in which the tribal court has jurisdiction over state law, its jurisdiction must be concurrent with the jurisdiction of the magistrates’ courts of the State; and defendants shall have the right to remove the cases to the magistrate’s court or appeal their convictions in tribal court cases to the General Sessions Court, in the same manner that magistrate’s court decisions may be appealed, or in accordance with procedures the General Assembly may provide. In cases where the tribal court is applying those additional ordinances or laws described in item (1), it shall have exclusive jurisdiction.

 (C) For the purpose of enforcing the Tribe’s powers provided by this chapter and the federal implementing legislation, the Tribe may employ peace officers.

 (1) If the Tribe elects to employ peace officers, all tribal peace officers shall undergo and pass the same course of training required of sheriff’s deputies by South Carolina.

 (2) The State, the Counties of York and Lancaster, and the Tribe shall enter into a cross‑deputization agreement whereby tribal law enforcement officers are authorized to enforce state, county, and tribal law within the Reservation against members and nonmembers of the Tribe, and state and county law enforcement officers are authorized to enforce state, county, and tribal law within the Reservation against members and nonmembers of the Tribe. However, if the reservation is located in only one of the two counties, only the sheriff of that county shall enter into a cross deputization agreement as provided in this section.

HISTORY: 1993 Act No. 142, Section 1.

CROSS REFERENCES

This section governs as to whether jurisdiction is exclusive or concurrent, if Tribal Court is established pursuant to this section, see Section 27‑16‑80.

Library References

Indians 32(7), 38(2), 39.

Westlaw Topic No. 209.

**SECTION 27‑16‑80.** Tribal courts ‑ original and appellate civil; full faith and credit; waiver of jurisdiction; appeal to nonTribal courts; claims and suits against Tribe; limited sovereign immunity; liability insurance; partial applicability of Tort Claims Act; satisfaction of judgments.

 (A) The Tribe may provide in its constitution for a Tribal Court having civil jurisdiction which may extend up to, but not exceed, the extent provided in this chapter and the federal implementing legislation. The Tribe may have a court of original jurisdiction, as well as an appellate court.

 (1) With respect to actions on contracts, the Tribal Court may be vested with jurisdiction over an action on a contract:

 (a) to which the Tribe or a member of the Tribe is a party, which expressly provides in writing that the Tribal Court has concurrent or exclusive jurisdiction.

 (b) between the Tribe or a member of the Tribe and other parties or their agents who are physically present on the Reservation when the contract is made, and which is to be performed in part on the Reservation so long as the contract does not expressly exclude jurisdiction of the Tribal Court. For purposes of this section, the delivery of goods or the solicitation of business on the Reservation does not constitute part performance sufficient to confer jurisdiction.

 (c) to which the Tribe or a member of the Tribe is a party where more than fifty percent of the services to be rendered are performed on the Reservation, so long as the contract does not expressly exclude jurisdiction of the Tribal Court.

 (2) With respect to actions in tort, the Tribal Court may be vested with jurisdiction over an action arising out of:

 (a) an intentional tort, as defined by South Carolina law, committed on the Reservation, in which recovery is sought for bodily injuries or damages to tangible property located on the Reservation.

 (b) negligent tortious conduct occurring on the Reservation or conduct occurring on the Reservation for which strict liability may be imposed, excluding, however, accidents occurring within the right‑of‑way limits of a highway, road, or other public easement owned or maintained by the State or its subdivisions or by the United States, which abuts or crosses the Reservation. However, the action in tort involving a nonmember of the Tribe as defendant may be removed to a state or federal court of appropriate jurisdiction if the amount in controversy exceeds the jurisdictional limits then applicable to magistrate’s court in South Carolina.

 (3) The Tribal Court may be vested with exclusive jurisdiction over internal matters of the Tribe.

 (4) The Tribal Court also may be vested with jurisdiction over domestic relations where both spouses to the marriage are members of the Tribe and both reside on the Reservation or last resided together on the Reservation before the separation leading to their divorce.

 (5) The Tribal Court also may be vested with jurisdiction to enforce against a business located on the Reservation and members or nonmembers residing on the Reservation, tribal civil regulations regulating conduct on the Reservation enacted pursuant to Section 10.2 or 17 of the Settlement Agreement. The entity or person is charged with notice of the Tribe’s regulations governing conduct on the Reservation and is subject to the enforcement of the regulations in the Tribal Court unless the Tribe specifically has exempted the entity or person from any or all regulation or enforcement in Tribal Court.

 (B) The original jurisdiction of the Tribal Court over the matters set forth in subsections (A)(1)(b), (A)(1)(c), (A)(2), and (A)(4) must be concurrent with the jurisdiction of the Court of Common Pleas of South Carolina, the Family Court, and the United States District Court for South Carolina. The original jurisdiction of the Tribal Court over the matters set forth in subsection (A)(1)(a) must be concurrent or exclusive depending upon the agreement of the parties. The original jurisdiction of the Tribal Court over matters set forth in subsection (A)(3) must be exclusive. The original jurisdiction of the Tribal Court over matters set forth in subsection (A)(5) must be exclusive unless the Tribe has waived exclusive jurisdiction as to any person or entity. As to all sections referred to in this subsection, jurisdiction over appeals, if any, must be governed by subsection (D).

 (C) The Tribe may waive Tribal Court jurisdiction or the application of tribal laws with respect to a person or firm residing, doing business, or otherwise entering upon the Reservation or contracting with the Tribe. A member of the Tribe also may waive Tribal Court jurisdiction or specify in the contract the law of an appropriate jurisdiction to govern a commercial transaction or the interpretation of a contract to which the member is a party.

 (D)(1) All final judgments entered in actions tried in Tribal Court are subject to an appeal to the Family Court, the Court of Common Pleas, or the United States District Court, depending upon whether that court would have had jurisdiction over the appealed matter had it been commenced in that court, if all of the following circumstances exist:

 (a) A party to the suit is not a member of the Tribe;

 (b) The amount in controversy or the cost of complying with an equitable order or decree exceeds the jurisdictional limits then applicable in the magistrates’ courts of South Carolina;

 (c) The subject matter of the suit does not fall within subsection (A)(1)(a) if jurisdiction is exclusive or subsection (A)(3) or (A)(5). The Tribe may enlarge the right of appeal to include other subject matters and members of the Tribe, subject to rules and procedures the applicable court and relevant state laws may provide.

 (2) In an appeal, the court, as appropriate, may:

 (a) enter judgment affirming the Tribal Court;

 (b) dismiss the case for lack of jurisdiction of the Tribal Court, but only in those cases where the Tribal Court first has addressed the issue of its jurisdiction;

 (c) reverse or remand the case for retrial or reconsideration in Tribal Court; or

 (d) grant a trial de novo in its court.

 (3) In an appeal, a trial, or a trial de novo, the reviewing court shall apply any regulation enacted pursuant to tribal authority.

 (E)(1) In cases subject to subsection (A)(2) or (D), all final judgments of the Tribal Court must be given full faith and credit in the state court with appropriate jurisdiction, and the Tribal Court shall grant full faith and credit to state court final judgments.

 (2) In those cases which are not subject to subsection (A)(2) or (D), the judgment must be reviewed by the state court in the manner provided in the Uniform Arbitration Act, Section 15‑48‑10 et. seq. or, if appropriate, by the federal court in the manner provided in the United States Arbitration Act, 9 U.S.C. 1 et. seq.

 (F)(1) The Tribe may sue or be sued, in a court of competent jurisdiction. However, the Tribe enjoys sovereign immunity including damage limits and, except as provided in this subsection, immunity from seizure, execution, or encumbrance of properties, to the same extent as the political subdivisions of the State as provided in the South Carolina Tort Claims Act, Chapter 78 of Title 15. With respect to nonconsumer liability based on contract, however, the Tribe, in a written contract, may provide that it is immune from suit on that contract as if there had been no waiver of sovereign immunity.

 (2) Notwithstanding the provisions of this subsection, the Tribe is subject to suit as provided in Section 27‑16‑120(B).

 (3) The Tribe shall procure and maintain liability insurance with the same coverage and limits as required of political subdivisions of the State by Section 15‑78‑140(b).

 (4) An action alleging tortious conduct by an employee of the Tribe acting within the scope of his duties which seeks money damages against the Tribe must name only the Tribe as a party defendant.

 (5) A settlement or judgment in an action or a settlement of a claim filed with the Tribe constitutes a complete bar to further action by the claimant against the Tribe by reason of the same occurrence.

 (6) A claimant may file a verified claim for damages with the Tribe before filing suit but is not required to file the claim as a prerequisite to filing suit.

 (a) The claim must set forth the circumstances which brought about the loss, the extent of the loss, the time and the place the loss occurred, the names of all witnesses, if known, and the amount of the loss sustained.

 (b) The Tribe shall designate an employee or office to accept the filing of claims. Filing may be accomplished by receipt by the Tribe’s designee of certified mailing of the claims or by compliance with the provisions of law relating to service of process.

 (c) If filed, the claim must be received within one year after the loss was or should have been discovered.

 (d) The Tribe has one hundred eighty days from the date of the filing of the claim in which to determine whether the claim is allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days after the filing of the claim is considered a disallowance of the claim.

 (e) While the filing of the claim is not required as a prerequisite to suit, if a claimant files a claim, he may not institute an action until after the occurrence of the earliest of one of the following three events:

 (i) passage of one hundred eighty days from the filing of the claim with the Tribe;

 (ii) Tribe’s disallowance of the claim;

 (iii) Tribe’s rejection of a settlement offer.

 (7) The provisions of the following sections of the South Carolina Tort Claims Act apply to the Tribe to the same extent as they apply to the State and its political subdivisions:

 (a) Section 15‑78‑100(c), joint tortfeasors;

 (b) Section 15‑78‑110, statute of limitations;

 (c) Section 15‑78‑170, survival actions;

 (d) Section 15‑78‑190, applicability of uninsured or underinsured defendant insurance.

 (8) If the Tribe’s insurance coverage is inadequate or unavailable to satisfy a judgment within the limits of the Tort Claims Act, neither the judgment nor any other process may be levied upon the corpus or principal of the Tribal Trust Funds or upon property held in trust for the Tribe by the United States. However, the Tribe or the Secretary of Interior shall honor valid orders of a federal or state court which enters money judgments for causes of action against the Tribe arising after the effective date of this chapter, by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment or payments of income from the Tribal Trust Funds.

 (G) The Indian Child Welfare Act, 25 U.S.C. Section 1901 et seq., applies to Catawba Indian Children as set forth in the federal implementing legislation.

 (H) If no Tribal Court is established by the Tribe, the State shall exercise jurisdiction over all civil and criminal causes arising out of acts and transactions occurring on the Reservation or involving members of the Tribe. If the Tribe does establish a Tribal Court pursuant to Section 27‑16‑70(B) or 27‑16‑80(A), Section 27‑16‑70(B)(2) or 27‑16‑80 (B) governs whether jurisdiction is exclusive or concurrent.

HISTORY: 1993 Act No. 142, Section 1.

Library References

Indians 2, 27(7), 32(7).

Judgment 815.

Westlaw Topic Nos. 209, 228.

C.J.S. Judgments Sections 965 to 979.

NOTES OF DECISIONS

In general 1

1. In general

Absent establishment of a tribal court, all civil actions involving internal matters of Indian tribe were required, pursuant to Settlement Agreement entered into between the tribe, the United States, and South Carolina, and its implementing federal and state legislation, to be brought in South Carolina courts, and therefore federal court lacked jurisdiction in action brought by individual members of tribe alleging that tribal leadership was acting improperly in its control over tribal assets and affairs; selection of state forum to handle intra‑tribal disputes was an exercise of tribe’s sovereign power. Wade v. Blue (C.A.4 (S.C.) 2004) 369 F.3d 407. Courts 513

**SECTION 27‑16‑90.** State may convey Existing Reservation to United States; Expanded Reservation; Expansion Zones; improvements in Expansion Zones; eminent domain; taxes; easements.

 (A) The State, after obtaining any necessary judicial approval, may convey the Existing Reservation to the United States of America.

 (B) An Expanded Reservation shall be created in the manner prescribed by the federal implementing legislation and the Settlement Agreement. This Expanded Reservation must be joined with the Existing Reservation to form the new tribal Reservation.

 (1)(a) The total area of the Reservation is limited to three thousand acres, including the Existing Reservation, but the Tribe may exclude from this limit up to six hundred acres of additional land if the land is:

 (i) within rights‑of‑way for public roads or public utilities rendered unusable for development by the easement or right‑of‑way;

 (ii) within the one hundred‑year flood plain of the Catawba River as defined by the Federal Emergency Management Agency, or its successor;

 (iii) nondevelopable wetland defined or restricted by law or regulation so that buildings, structures, and other improvements are prohibited;

 (iv) park or recreational land accessible to the public and dedicated permanently to public use.

 (b) After completion of a comprehensive development plan the Tribe may seek to have the permissible area of the Expanded Reservation enlarged to a maximum of three thousand, six hundred acres, plus up to six hundred acres of land as described in subitem (a). Expansion must be approved first, however, by the Secretary and then by ordinance of the county council governing the area where the additional lands are to be acquired and by a law or joint resolution enacted by the General Assembly and signed by the Governor of South Carolina.

 (2) Before placing a noncontiguous tract in Reservation status, the Tribe, in consultation with the Secretary, shall submit to the county council in a county where it proposes to purchase noncontiguous tracts for Reservation status a Noncontiguous Development Plan Application. As used in this item ‘application’ is as described in the Settlement Agreement.

 (3) The Tribe shall present its application to the county council of each county in which the Secretary proposes to purchase noncontiguous tracts to be placed in Reservation status. The county council shall make findings on the extent to which the application has met the criteria set forth in the Settlement Agreement and recommend to the Governor whether or not the application should be approved. After receiving the county council’s recommendation, the Tribe may modify its application and resubmit it to the county council or present it to the Governor for approval. Giving due deference to the recommendation of the county council, the Governor shall review the application and decide whether to approve or disapprove it on the basis of the criteria set forth in the Settlement Agreement. Neither the county council’s approval nor the Governor’s approval may be withheld unreasonably. The Governor’s final action must be accompanied by a written statement of reasons and is reviewable under the laws of the State.

 (4) Upon approval by the Governor of the Tribe’s Application, the Secretary, in consultation with the Tribe, may proceed to place noncontiguous tracts in Reservation status in accordance with the application, this chapter, and the terms of the Settlement Agreement.

 (C) The Secretary and the Tribe shall endeavor at the outset to acquire contiguous tracts for the expanded Reservation in the area referred to in the Settlement Agreement as the “Primary Expansion Zone”. The Primary Expansion Zone lies within the area bounded by S. C. Highway No. 5 on the south running northwesterly to its intersection with Springdale Road on the west and northeasterly to the Catawba River along Sturgis Road; east along the Catawba River to its confluence with Sugar Creek; north along Sugar Creek to its intersection with S. C. Highway No. S‑29‑41, Doby Bridge Road; with S. C. Highway S‑29‑41 to its intersection with U.S. Highway No. 521; with U.S. Highway No. 521 in a southerly direction to its intersection with S. C. Highway No. S‑29‑55, Van Wyck Road, on the east; with S. C. Highway No. S‑29‑55 to its intersection with Twelve Mile Creek on the south; and with Twelve Mile Creek to S. C. Highway No. 5 on the south. This area is known as the “Catawba Reservation Primary Expansion Zone”.

 (D) The Secretary, in consultation with the Tribe, may elect to purchase contiguous tracts in an alternative area described in the Settlement Agreement as the Secondary Expansion Zone, under the conditions provided in subsections (B)(2) and (3). The Secondary Expansion Zone consists of the area bounded by Sugar Creek on the west; the Catawba River on the south extending to the Norfolk Southern Railway trestle on the west; northerly with the railroad right‑of‑way to its intersection with S.C. S‑46‑329, Brickyard Road; east to S.C. S‑46‑41, Doby Bridge Road; easterly along S.C. S‑46‑41 to its intersection with Sugar Creek. This area is known as the “Catawba Reservation Secondary Expansion Zone”.

 (E) The Primary and Secondary Expansion Zones in subsections (C) and (D) are the preferred and only approved zones for expansion of the Reservation. However, after completing a comprehensive plan of development, the Tribe may propose different or additional expansion zones. The zone first must be approved by the Secretary, then by ordinance of the county council where the zone is located, and by law or joint resolution enacted by the General Assembly of South Carolina and signed by the Governor. The combined area of all land acquisitions, including land in specially approved zones, may not exceed the limits imposed by this section.

 (F) Before the Tribe’s comprehensive planning process, the South Carolina Department of Highways and Public Transportation shall consult with the Tribe about planned and proposed major highways within the Primary and Secondary Expansion Zones in the manner described in the Settlement Agreement.

 (G) Before the Tribe’s comprehensive planning process, the South Carolina Department of Health and Environmental Control shall consult with the Tribe about the location of future sewage treatment facilities that may serve the Primary and Secondary Expansion Zones in the manner described in the Settlement Agreement. The Tribe is responsible for the design, construction, operation, and maintenance of its own sewage collection system and for the cost of constructing an extension line and tap to the transmission line. The Tribe also is subject to fees for use of the treatment system and transmission line and subject to all regulations imposed on users of the system. The Department of Health and Environmental Control shall endeavor to ensure that the fees, charges, and rules are the same as those applied to municipal users of the system. If the Tribe is required to construct an extension line to connect with a transmission line, the Tribe may charge non‑Reservation users along the extension line reasonable tap and user fees.

 (H) Except as provided in this subsection, the power of eminent domain must not be used by a governmental authority in acquiring parcels of land for the benefit of the Tribe, whether or not the parcels are to be part of the Reservation. All purchases may be made only from willing sellers by voluntary conveyances, except if the ostensible owner agrees to the sale, the Secretary may use condemnation proceedings to perfect or clear title and to acquire any interests of putative defendants whose addresses are unknown or the interests of unborn heirs or persons subject to mental disability. For South Carolina income tax purposes, the conveyance must be treated in the manner provided by Internal Revenue Code Section 1033 if the federal implementing legislation provides for that treatment under federal law. Filing and recording fees, all documentary tax stamps, and other fees incident to the conveyance of real estate are payable in connection with the purchases regardless of whether the property is purchased by the Tribe or by the United States in trust for the Tribe. Real property taxes levied for the year of closing must be prorated and paid at closing, or if the amount of property taxes to be due then cannot be calculated, property taxes must be estimated and escrowed at closing.

 (I) The purchase of land specially assessed as agricultural use property by York or Lancaster County shall not result in a rollback of property taxes if the property is placed by the Tribe in Reservation status within one year of the date of purchase. If specially assessed land is acquired and not made part of the Reservation within one year, deferred or rollback taxes are due and payable without interest to the county treasurer.

 (J) The acquisition of lands for the expanded Reservation may not extinguish easements or rights‑of‑way then encumbering the lands unless the Secretary or the Tribe enters into a written agreement with the owners terminating the easements or rights‑of‑way. The Secretary, with the approval of the Tribe, has the power to grant or convey easements and rights‑of‑way for public roads, public utilities, and other public purposes over the Reservation. Unless the Tribe and the State agree upon a valuation formula for pricing easements over the Reservation, the Secretary is subject to proceedings for condemnation and eminent domain to acquire easements and rights‑of‑way for public purposes through the Reservation under the laws of South Carolina in circumstances where no other reasonable access is available. With the approval of the Tribe, the Secretary also may grant easements or rights‑of‑way over the Reservation for private purposes, and implied easements of necessity apply to all lands acquired by the Tribe, unless expressly excluded by the parties.

 (K) Only land made part of the Reservation is governed by the special jurisdictional provisions set forth in this chapter and in the federal implementing legislation.

HISTORY: 1993 Act No. 142, Section 1.

Library References

Indians 12.

Westlaw Topic No. 209.

United States Supreme Court Annotations

Validity, under Federal Constitution, statutes, and treaties, of state or local tax as affected by its imposition on Indians, their property or activities, or in connection with an Indian reservation—Supreme Court cases. 73 L Ed 2d 1506.

**SECTION 27‑16‑100.** Tribal ownership of realty outside Reservation.

 (A) The Tribe may acquire parcels of real estate outside the Reservation in the manner provided by the federal implementing legislation and the Settlement Agreement. These parcels must not be part of the Reservation, governed by the special jurisdictional provisions set forth in this chapter, or subject to other special attributes on account of their ownership by the Tribe as a corporate entity or by the Secretary as trustee for the Tribe, except as provided in this section.

 (1) If the ownership of the properties by the Secretary or the Tribe or a subentity of the Tribe removes the property from ad valorem taxation, payments must be made by the Tribe in lieu of taxation that are equivalent to the taxes that otherwise would be paid if the property were subject to levy.

 (2) The Tribe may lease, sell, mortgage, restrict, encumber, or otherwise dispose of non‑Reservation lands in the same manner as other persons and entities under state law. The Tribe as landowner shall be subject to the same obligations and responsibilities as other persons and entities under state and local law, including local zoning and land use laws and regulations.

 (B) All non‑Reservation properties and all activities conducted on the properties shall be subject to the laws, ordinances, taxes, and regulations of the State and its political subdivisions, except as specifically provided in this chapter and the federal implementing legislation. This general jurisdictional principle shall extend to non‑Reservation properties held by the Tribe as a corporate entity and to properties held in trust by the United States designated as non‑Reservation property when acquired. The laws, ordinances, taxes, and regulations of the State and its subdivisions shall apply to non‑Reservation properties in the same manner as the laws, ordinances, taxes, and regulations apply to other properties held by non‑Indians located in the same jurisdiction.

HISTORY: 1993 Act No. 142, Section 1.

Library References

Indians 2, 9.1.

Westlaw Topic No. 209.

**SECTION 27‑16‑110.** Bingo, video poker and similar devices; other gambling or wagering; state laws to govern; licenses; tax.

 (A) Except as specifically provided in the federal implementing legislation and this chapter, all laws, ordinances, and regulations of South Carolina and its political subdivisions govern the conduct of gambling or wager by the Tribe on and off the Reservation.

 (B) The State shall govern the conduct of bingo under Article 24, Chapter 21 of Title 12, Regulation of Bingo Games, including regulations or rulings issued in relation to that article, except as provided by the special bingo license to which the Tribe is entitled in accordance with this section if it elects to sponsor bingo games under the special license.

 (1) For purposes of conducting the game of bingo, the Tribe is deemed a nonprofit organization under Article 24, Chapter 21 of Title 12.

 (2) If the Tribe elects to conduct the game of bingo either on or off the Reservation, the Tribe shall obtain a license from the South Carolina Department of Revenue. Based on the Tribe’s election, the Tribe may be licensed by the South Carolina Department of Revenue to conduct games of bingo under a regular license allowed nonprofit organizations or under the special license provided by this section.

 (C) The Tribe may apply to the South Carolina Department of Revenue for a special bingo license in lieu of licenses authorized by Article 24, Chapter 21 of Title 12. A special or regular license must be granted if the Tribe complies with licensing requirements and procedures. The special license is identical in all respects to the class of license permitting the highest level of prizes allowed by law and carries the same privileges and duties as the class of license permitting the highest level of prizes provided by law, except:

 (1) The frequency of the sessions must be determined by the executive committee but must be no more frequent than six sessions a week, with sessions on Sundays prohibited unless state law otherwise expressly allows Sunday sessions.

 (2) The amount of prizes offered each session must be determined by the Tribe, but must not be greater than one hundred thousand dollars for any game.

 (3) The Tribe shall pay, in lieu of an admission, a head, a license, or any other bingo tax, a special bingo tax equal to ten percent for each dollar of face value for each bingo card sold. No other federal, state, or local taxes apply to revenues generated by the bingo games operated by the Tribe. All revenues derived from the special bingo tax must be collected by the South Carolina Department of Revenue and deposited with the State Treasurer for the benefit of the General Fund of South Carolina.

 (4) At least fifty percent of the gross proceeds received by the Tribe during a calendar quarter must be returned to the players in the form of prizes. For purposes of this section, “gross proceeds” does not include the ten percent special bingo tax.

 (5) The Tribe is entitled to two bingo licenses, and these licenses may be used to operate at two locations only. They are not assignable to any other entity or individual.

 (6) The net proceeds derived by the Tribe from the conduct of bingo may be used for any purpose authorized by the Tribe.

 (D) The Tribe may elect to operate one of the games under a special bingo license off the Reservation and not within the one hundred forty‑four thousand acre Catawba Claim Area, but before doing so, it first must obtain the approval of the governing authority of the county and any municipality in which it seeks to locate the facility. If the Tribe elects to operate one or both of the games off the Reservation but within the one hundred forty‑four thousand acre Catawba Claim Area, it shall do so in an area zoned compatibly for commercial activities after consulting with the municipality or county where a facility is to be located.

 (E) The sponsor and promoter of the bingo games is the Catawba Indian Tribe, and all profits gained from the enterprise accrue to the Tribe. The South Carolina Department of Revenue, or its regulatory successor, has the power to administer, oversee, and regulate all bingo games sponsored and conducted by the Tribe, audit and enforce the operation of the games, and assess and collect taxes, interest, and penalties in accordance with the laws and regulations of the State as they apply to the Tribe. The South Carolina Department of Revenue, or its regulatory successor, has the right to suspend or revoke the Tribe’s bingo license or special bingo license if the Tribe violates the law with regard to conducting the game. However, the Department of Revenue, or its regulatory successor, first shall notify the Tribe of violations and provide the Tribe with an opportunity to correct the violations before its license may be revoked. Failure to pay bingo taxes, interest, or penalties may be grounds for license revocation.

 (F) A license of the Tribe to conduct bingo must be revoked if the game of bingo is no longer licensed by the State. If the State resumes licensing the game of bingo, the Tribe’s license or special license must be reinstated if the Tribe complies with all licensing requirements and procedures.

 (G) The Tribe may permit on its Reservation video poker or similar electronic play devices to the same extent that the devices are authorized by state law. The Tribe is subject to all taxes, license requirements, regulations, and fees governing electronic play devices provided by state law, except if the Reservation is located in a county or counties which prohibit the devices pursuant to state law, the Tribe nonetheless must be permitted to operate the devices on the Reservation if the governing body of the Tribe so authorizes, subject to all taxes, license requirements, regulations, and fees governing electronic play devices provided by state law.

 (H) If the Tribe elects to sponsor and conduct games of bingo under a regular license allowed nonprofit organizations under Article 24, Chapter 21 of Title 12, the Tribe must be taxed as a nonprofit corporation under that article.

HISTORY: 1993 Act No. 142, Section 1; 1998 Act No. 334, Section 2.

CROSS REFERENCES

Revenues from bingo games conducted under special license under this section are subject to ten percent tax levy of this section exclusively, with no other taxes applicable, see Section 27‑16‑130.

Library References

Indians 32(12).

Westlaw Topic No. 209.

United States Supreme Court Annotations

Validity, under Federal Constitution, statutes, and treaties, of state or local tax as affected by its imposition on Indians, their property or activities, or in connection with an Indian reservation—Supreme Court cases. 73 L Ed 2d 1506.

NOTES OF DECISIONS

In general 1

License or bingo tax 2

1. In general

Pursuant to terms of settlement agreement and state act, which gave tribe specific rights related to bingo and video poker or similar electronic play devices, Indian tribe had right to allow video poker and similar electronic play devices on its reservation, either by third‑party’s operation or its own operation, to same extent devices were authorized by state law; legislative intent was to circumscribe tribe’s right to allow video poker devices on its reservation, and by Congress’s express approval of act and by terms of agreement and act, tribe relinquished any attributes of sovereignty relating to games of chance in state. Catawba Indian Tribe of South Carolina v. State (S.C. 2007) 372 S.C. 519, 642 S.E.2d 751, rehearing denied, certiorari denied 128 S.Ct. 256, 552 U.S. 888, 169 L.Ed.2d 149. Indians 337(2)

2. License or bingo tax

General entrance fee imposed by section of statute governing entrance fee surcharges was not applicable to Indian tribe’s bingo operation; provision of state act, which gave tribe specific rights related to bingo and video poker or similar electronic play devices, stated that tribe must pay special bingo tax instead of admission or entrance fee, and imposition of statute against tribe’s bingo operation violated plain language of provision of state act. Catawba Indian Tribe of South Carolina v. State (S.C. 2007) 372 S.C. 519, 642 S.E.2d 751, rehearing denied, certiorari denied 128 S.Ct. 256, 552 U.S. 888, 169 L.Ed.2d 149. Indians 340

**SECTION 27‑16‑120.** Building code; environmental law and regulation; land use plan; health code; hunting and fishing; littoral and riparian rights; regulation of alcohol.

 (A) The Tribe shall incorporate by reference and adopt the York County Building Code and may contract with York County for the services necessary to enforce, inspect, and regulate compliance with its code. The services must be provided at no charge by York County as an in‑kind contribution toward settlement. In addition, those local jurisdictions which exact a fee, a permit, or inspection services shall waive the fees otherwise charged for building permit or inspection services on the Reservation. The Tribe is empowered, but not required, to adopt building code provisions to be applied on the Reservation in addition to, but not in derogation of, the York County Building Code.

 (B) All state and local environmental laws and regulations apply to the Tribe and to the Reservation and are fully enforceable by all relevant state and local agencies and authorities. Similarly, all requirements that a license, permit, or certificate be obtained from a state or local agency also apply to the Tribe and to the Reservation. This provision extends without limitation to all environmental laws and regulations adopted in the future.

 (1) The Tribe, the Executive Committee, and all members of the Tribe have the same status as other citizens or groups of citizens to contest, object to, or intervene in a proceeding or an action in which environmental regulations are being made, adjudicated, or enforced or in which licenses, permits, or certificates of convenience and necessity are being issued by an agency of the State or a local government and no special or preferential status under any laws.

 (2) The Tribe has the authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or by local governing bodies. However, tribal regulations apply only to the Reservation and not to property surrounding the Reservation or non‑Reservation property or to the use of the Catawba River. Tribal regulations also do not apply to activities or uses off the Reservation, even if those activities affect air quality on the Reservation.

 (3) The Tribe is not authorized to invoke sovereign immunity against a suit, a proceeding, or an enforcement action involving state or local environmental laws or regulations and is subject to all enforcement orders, restraining orders, fees, fines, injunctions, judgments, and other corrective or remedial measures imposed by the laws. This section does not impose different standards or requirements on the Tribe or the Secretary, when acting on the Tribe’s behalf, than would be applied to a private corporation.

 (C) With respect to a land use regulation within the Reservation, the Tribe has the power to adopt and enforce a land use plan after consultation with York and Lancaster Counties for those parts of the Reservation located in those respective jurisdictions. The Tribe and the affected governing bodies shall follow the substantive considerations and consultative procedures described in the Settlement Agreement.

 (D) All public health codes of South Carolina and any county in which the Reservation is located are applicable on the Reservation.

 (E) Hunting and fishing, on or off the Reservation, must be conducted in compliance with the laws and regulations of South Carolina. Members of the Tribe are subject to all state and local regulations governing hunting and fishing on and off the Reservation. However, for ninety‑nine years following the effective date of this chapter, members of the Tribe are entitled to personal state hunting and fishing licenses without payment of fees. The Tribe and its members are subject to the same fees and requirements as all other citizens of the State in applying for and obtaining commercial hunting and fishing licenses. The Tribe has the authority to impose hunting, fishing, and wildlife rules and regulations on the Reservation that are stricter than those adopted by the State.

 (F) The littoral and riparian rights of the Catawba Indian Tribe in the Catawba River or in other streams or waters crossing their lands do not differ in any respect from the rights of other owners whose land abuts nontidal bodies of water or nontidal water courses in South Carolina. The rights and obligations covered by this subsection include, but are not limited to, those described in the Settlement Agreement. These qualifications apply to the Existing Reservation, lands acquired for the Expanded Reservation, other lands acquired by or for the benefit of the Tribe, and non‑Reservation lands.

 (G) Alcohol is prohibited on the Reservation unless the Tribe adopts laws or ordinances permitting the sale, possession, or consumption of alcohol on the Reservation. If the Tribe adopts the laws or ordinances, they must incorporate all state standards and regulations regarding hours, sales to minors, employment, consumption, possession, and standards for licensing. However, the Tribe may impose stricter standards and regulations than those prescribed by state law. If beer, wine, and alcoholic liquor are sold on the Reservation, licenses must be issued by the State in accordance with South Carolina law, and all beer, wine, and alcoholic liquor taxes must be paid to the State in accordance with South Carolina law.

HISTORY: 1993 Act No. 142, Section 1.

CROSS REFERENCES

Limited sovereign immunity of Catawba Indian Tribe, see Section 27‑16‑80.

Library References

Indians 16.5, 32.7, 39.

Westlaw Topic No. 209.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Game and Fish Section 11, Exemptions from License Requirements.

Attorney General’s Opinions

Big game licenses and wildlife preserve licenses should be included with those licenses which the Catawbas may obtain free of charge. 1994 Op. Atty Gen, No. 94‑68, p. 144.

NOTES OF DECISIONS

In general 1

1. In general

Catawba combination license issued to Catawba Indians pursuant to terms of Catawba Indian Claims Settlement Act was functional equivalent of “sportsman license,” which included privilege of hunting on wildlife management area (WMA). State v. Keesee (S.C. 1999) 336 S.C. 599, 521 S.E.2d 743. Indians 354

**SECTION 27‑16‑130.** Taxation of Tribe and tribal persons, entities, and property; taxation of persons or enterprises operating or doing business on Reservation.

 (A) The Tribe, its members, the Tribal Trust Funds, and other persons or entities affiliated with or owned by the Tribe, members of the Tribe, or the Tribal Trust Funds, whether a resident, located, or doing business on or off the Reservation, are subject to all state and local taxes, sales taxes, real and personal property taxes, excise taxes, estate taxes, and all other taxes, licenses, levies, and fees, except as expressly provided in this section or the federal implementing legislation. Any other person or business entity which locates, operates, or does business on the Reservation is subject without exception to all state and local taxes, licenses, and fees, unless otherwise expressly provided in this chapter. To the extent the Tribe may be subject to taxes under this section, the Tribe must be taxed as if it were a business corporation incorporated under the laws of South Carolina unless otherwise expressly provided.

 (B) If the Tribe elects to sponsor and conduct games of bingo under the special bingo licenses under Section 27‑16‑110(C), the gross revenues generated by the bingo games must be subject to the ten percent tax levy specified in that section exclusively, and no other federal, state, or local taxes apply to revenues generated by the bingo games which are received by the Tribe.

 (C)(1) Income of the Tribe, subdivisions and governmental agencies of the Tribe, including entities owned by the Tribe or the federal government on behalf of the Tribe, the Tribal Trust funds, and tax revenues collected by the Tribe by levy or assessment which are nontaxable for federal income tax purposes because of the Tribe’s status as a recognized or restored Indian tribe also are nontaxable for purposes of state income taxes or local income taxes.

 (2) Members of the Tribe are liable for payment of state and local income taxes to the same extent as any other person in the State, except income earned by members of the Tribe for work performing governmental functions solely on the Reservation is exempt for ninety‑nine years from the effective date of this chapter. Income earned by members of the Tribe from the sale of Catawba Indian pottery and artifacts, on or off the Reservation, which are made by members of the Tribe are exempt from state and local income taxes. No funds distributed pursuant to the Per Capita Payment Trust Fund created by the federal implementing legislation are subject at the time of distribution to state or local income taxes. However, income subsequently earned on shares distributed to members of the Tribe is subject to the same state and local income taxes as other persons in the State pay.

 (3) A person or other entity not exempt from income taxes under items (1) and (2) are liable for all federal, state, and local income taxes otherwise due regardless of whether or not they are doing business on the Reservation.

 (D)(1) All lands held in trust by the United States for the Tribe as part of the Reservation, all nonresidential buildings, fixtures, and real property improvements owned by the Tribe or held in trust by the United States for the Tribe on the Reservation are exempt from all property taxes levied by the State, a county, a school district, and a special purpose district. If the Tribe owns a partial interest in property or a business, the property tax exemption provided in this section is applicable to the extent of the Tribe’s interest.

 (2)(a) Single and multi‑family residences, including mobile homes, situated on the Reservation are exempt from all property taxes levied by the State, a county, a school district, and a special purpose district if all the following apply:

 (i) they are owned by the Tribe, members of the Tribe, or Tribal Trust Funds;

 (ii) for single family residences, if they are occupied by a member of the Tribe or the surviving spouse of a deceased member of the Tribe;

 (iii) for multifamily residences;

 a. if the property is valued on a per unit basis, those units which are occupied by a member of the Tribe or the surviving spouse of a deceased member or are unoccupied are exempt from property taxes. All other occupied units are subject to property taxes to the same extent that similar property is assessed and taxed elsewhere in the same jurisdiction. Occupancy is determined on the assessment date for the property;

 b. if the property is not valued on a per unit basis, the property is exempt from property taxes based on the percentage of units which are occupied by a member of the Tribe or the surviving spouse of a deceased member of the Tribe, and the property is subject to property taxes to the same extent that similar property is assessed and taxed elsewhere in the same jurisdiction based on the percentage of units not so occupied. In calculating the value, unoccupied units must not be considered. Occupancy is determined on the assessment date for the property;

 (iv) rental property constructed by the Tribe on the reservation through an Indian Housing Authority which is financed by HUD is exempt from all property taxes. In lieu of the taxes, the authority may agree to make payments to the county or a political subdivision for improvements, services, and facilities furnished by the county or political subdivision for the benefit of the housing project. However, the payments may not exceed the estimated cost to the county or political subdivision of the improvements, services, or facilities furnished.

 (b) For purposes of this section, residential property is deemed to be owned by a member of the Tribe if the member or the surviving spouse of a member owns at least a one‑half undivided interest in the property, and a unit is deemed occupied by members of the Tribe if at least one member or the surviving spouse of a member is living in the single‑family residence or in a unit of a multi‑family residence.

 (3) All buildings, fixtures, and real property improvements located on the Reservation which are not exempt from real property taxes under items (1) or (2) are subject to all property taxes levied by the State, a county, a school district, a special purpose district, and any other political subdivision to the same extent that similar buildings, fixtures, or improvements are assessed and taxed elsewhere in the same jurisdiction. However, the underlying land or leasehold in the land is not subject to real property taxes. All buildings, fixtures, and improvements subject to real property taxes are eligible for a tax abatement or temporary exemption allowed new business investments to the same extent as similar properties qualify for exemption or abatement in the same county.

 (4) The Tribe is authorized to levy taxes on buildings, fixtures, improvements, and personal property located on the Reservation, even though the properties may be exempt from property taxation by the State or its subdivisions, and may use the tax revenues for appropriate tribal purposes. The Tribe also may exempt or abate the taxes. York and Lancaster Counties and the South Carolina Tax Commission shall provide the necessary assistance to the Tribe if the Tribe chooses to assess tribal real property taxes as if they were property taxes imposed by a political subdivision.

 (5) Real property and improvements owned by the Tribe or by members of the Tribe, or both, and not located on the Reservation are subject to all property taxes levied by the State, the county, the school district, special purpose districts, and any other political subdivisions where the property is located.

 (6) To the extent that any non‑Reservation real property held in trust by the Secretary is not taxable for property tax purposes, it is subject to the payment of a fee or fees by the Tribe in an amount equivalent to the real property tax that would have been paid to the applicable taxing authority if the property had not been held in trust.

 (E)(1) All personal property owned by the Tribe during ninety‑nine years from the effective date of this chapter and used solely on the Reservation is exempt from personal property taxes levied by the State, a county, a school district, a special purpose district, and any other political subdivision. However, motor vehicles owned by the Tribe during the ninety‑nine year period are exempt from personal property taxes even if used off the Reservation.

 (2) All personal property owned by members of the Tribe is subject to personal property taxes levied by the State, a county, a school district, a special purpose district, and any other political subdivisions where the property is deemed to be located.

 (3) All personal property located on the Reservation which is not exempt from personal property taxes under item (1) is subject to personal property taxes levied by the State, a county, a school district, a special purpose district, and any other political subdivision encompassing the Reservation to the same extent that similar personal property is assessed and taxed elsewhere in the jurisdiction.

 (4) For purposes of subsection (D) and this subsection, the determination of whether the Tribe is the owner of property must be made in the same manner as for other taxpayers for South Carolina property tax purposes.

 (F) Subject to perfected security interests, if a taxpayer subject to property taxes under subsections (D) and (E) fails to pay the taxes, the appropriate taxing authority for the county or other political subdivision has the power to levy against personal property subject to personal property taxes owned by the taxpayer within the county, on or off the Reservation, in order to satisfy the taxes due.

 (1) If this levy against the personal property is not sufficient to satisfy the tax lien, the county or other political subdivision may certify the deficiency to the State, and the State shall levy against other taxable property of the taxpayer in the State and remit proceeds to the county or appropriate taxing authority which is owed the tax.

 (2) If the county or other political subdivision cannot satisfy its lien, the county or appropriate taxing authority may require the Tribe to cease allowing the taxpayer to do business on the Reservation.

 (3) If the taxpayer is in bankruptcy, the bankruptcy statutes apply to this section.

 (4) The State or any political subdivision may not seize real property located on the Reservation.

 (G) The Tribe and its members are subject to all license and registration fees and requirements, all periodic inspection fees and requirements, and all fuel taxes imposed by the State and local governments on motor vehicles, boats, airplanes, and other means of conveyance.

 (H) The Tribe, its members, and the Tribal Trust Funds are liable for the payment of all state and local sales and use taxes to the same extent as any other person or entity in the State, except as specifically provided as follows:

 (1) Purchases made by the Tribe for tribal government functions during ninety‑nine years from the effective date of this chapter are exempt from state and local sales and use taxes.

 (2) Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe are exempt from state and local sales and use tax.

 (3) During ninety‑nine years from the effective date of this chapter, the sale on the Reservation of all other items, made on or off the Reservation, are exempt from state and local sales and use taxes but are subject to a special tribal sales tax levied by the Tribe equal to the state and local sales tax that would be levied in the jurisdiction encompassing the Reservation but for this exemption.

 (a) The South Carolina sales and use tax laws, regulations, and rulings apply to the special tribal sales tax, and the special tribal sales tax must be administered and collected by the South Carolina Tax Commission.

 (b) The South Carolina Tax Commission separately shall account for the special tribal sales tax, and the State Treasurer shall remit the special tribal sales tax revenues periodically to the Tribe at no cost to the Tribe.

 (c) The tribal sales tax does not apply to retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. If it does not apply, the state sales tax applies.

 (d) The Tribe shall impose a tribal use tax on the storage, use, or other consumption on the Reservation of tangible personal property purchased at retail outside the State when the vendor does not collect the tax. However, use taxes collected by a vendor which is not located in the State are subject to state use taxes, and the use tax must be remitted to the State and not the Tribe. Use taxes not collected by the vendor and remitted to the State are subject to the tribal use tax and must be collected directly by the Tribe.

 (I) The Tribe shall pay a fee in lieu of school taxes. That fee must be determined by the school district in the same manner and must be the same amount paid by students from outside the county entering schools in the county.

 (1) The fee payable by the Tribe must be reduced by funds received by the government for Impact Aid under Sections 20 U.S.C. 236 et seq. or other federal funds designed to compensate school districts for loss of revenue due to the nontaxability of Indian property.

 (2) A fee paid on behalf of a child under this section must be excluded from state income of the child or his family for state income tax purposes.

 (J) Members of the Tribe are liable for payment of all estate and inheritance taxes, except the undistributed share of a member in the Per Capita Payment Trust Fund established by the federal implementing legislation and the Settlement Agreement are exempt from state estate and inheritance taxes.

 (K) The Indian Tribal Government Tax Status Act, 26 U.S.C. Section 7871, applies to the Tribe and its Reservation for South Carolina income tax purposes to the same extent as provided in the federal implementing legislation.

HISTORY: 1993 Act No. 142, Section 1.

CROSS REFERENCES

Goods coming into the state and delivered onto the Catawba Indian Reservation, see S.C. Code of Regulations R. 117‑334.

Library References

Taxation 2273, 3612.

Westlaw Topic No. 371.

United States Supreme Court Annotations

Validity, under Federal Constitution, statutes, and treaties, of state or local tax as affected by its imposition on Indians, their property or activities, or in connection with an Indian reservation—Supreme Court cases. 73 L Ed 2d 1506.

**SECTION 27‑16‑140.** Applicability of later‑enacted federal law; chapter invalid if entire federal implementing legislation judicially invalidated; construction as between chapter and Settlement Agreement; copies of Settlement Agreement available.

 (A) The provisions of a federal law enacted after the date of enactment of the federal law implementing this agreement shall not apply in the State if the provision materially affects or preempts the application of the laws of the State, including application of the laws of the State to lands owned by or held in trust for Indians, Indian Nations, Indian tribes, or bands of Indians. However, the federal law shall apply within the State if the State grants its approval by a law or joint resolution enacted by the General Assembly of South Carolina and signed by the Governor.

 (B) If the entire federal implementing legislation is rendered invalid by a court, this chapter is invalid.

 (C) Whenever possible, this chapter must be construed in a manner consistent with the Settlement Agreement. If there is a conflict between this chapter and the Settlement Agreement, this chapter governs. The Settlement Agreement must be maintained on file and available for public inspection in the Office of the Secretary of State and in the offices of the Clerks of Court for York and Lancaster Counties. Copies must be made available upon request upon the payment of reasonable and normal copying fees.

HISTORY: 1993 Act No. 142, Section 1.

Federal Aspects

Indians, see 25 U.S.C.A. Sections 1 et seq.

Power of Congress to regulate commerce with Indians, see US Const Art 1 Section 8, cl 3.

Library References

Indians 10.

Westlaw Topic No. 209.