

POKAGON BAND OF POTAWATOMI INDIANS

TAX REVENUE AND ADMINISTRATION CODE (INDIANA)

The Tribal Council enacts this Tax Code pursuant to the duties of the Tribal Council stated in Article IX, Subsections 1(a), 1(b) and 1(c) of the Constitution and the sovereign powers of the Tribal Council as enumerated in Article IX, Subsections 2(a), 2(d), 2(e) and 2(f) of the Constitution.

CHAPTER I DECLARATION OF NEED AND PURPOSE

1. The Band wishes to exercise its sovereignty to obtain revenue to fund governmental services of the Band through the imposition of certain taxes on food and beverage service and retail sales within the Indiana Reservation.
2. Pursuant to its sovereign authority, the Band entered into discussions with the State regarding the applicability of various State tax and employment laws and Band tax and employment laws as applied within and outside the Indiana Reservation.
3. In the interim while discussions on tax and employment laws with the State remain ongoing, the Tribal Council has determined that it is in the best interest of the Band to enact certain tax laws and regulations in order to further the Band's goals of economic development and to maintain parity with the State regarding certain taxes.
4. The scope of this Tax Code is limited to the Indiana Reservation. The Pokagon Band Tribal Tax Revenue and Administration Code enacted by the Tribal Council on December 4, 2003 by adoption of Resolution No. 03-12-04-04 applies solely to the areas of Indian country located in the State of Michigan over which the Tribe exercises jurisdiction. This Tax Code shall have no application to any areas of Indian country located in the State of Michigan.

CHAPTER II DEFINITIONS

Unless a word or phrase is expressly defined elsewhere in this Tax Code, the following words and phrases shall have the indicated meanings:

1. "Band" means the Pokagon Band of Potawatomi Indians and its political subdivisions, including the Pokagon Gaming Authority and all other entities wholly owned by the Band.
2. "Casino Food and Beverages" means restaurant food and beverage provided at casino operations within the Indiana Reservation.

3. “Casino Food and Beverage Sales” means Sale at Retail of Casino Food and Beverages.
4. “Collection Agent” means any Person responsible for collecting taxes under this Tax Code.
5. “Complimentary” means any provision of goods or services at or in connection with the Gaming Authority without cash payment, including food and beverages, whether provided through a “Players Club” through a similar credit system, or otherwise in accordance with applicable gaming regulations, policies and procedures.
6. “Constitution” means the Constitution of the Pokagon Band of Potawatomi Indians.
7. “Finance Director” means the Director of the Finance Department of the Band.
8. “GAAP” means generally accepted accounting principles, consistently applied.
9. “Gaming Authority” means the Pokagon Gaming Authority, a wholly-owned unincorporated governmental subdivision of the Band established by enactment of the Pokagon Band Gaming Authority Ordinance on May 25, 2006 by adoption of Resolution No. 06-05-25-06, as amended, which was established to conduct Class II or Class III gaming on Pokagon Band “Indian Land”, as defined in the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*).
10. “Gross Receipts” means the total amount for which goods or services is sold or the total amount received for any service rendered, whether paid in money or otherwise. Such total amounts include all of the following: (a) any services that are a part of the sale, (b) any amount for which credit is given to the purchaser by the seller, (c) the value of any Complimentary goods or services given to the purchaser in connection with the provision of such goods and services, and (d) all receipts, cash, credits and property of any kind received in connection with, or on account of, such goods or services. No deduction shall be made for interest or other financing charges, the cost of goods sold or services furnished, or any other expense.
11. “Indiana Reservation” means pursuant to 25 U.S.C. § 1300j-5 or other applicable federal law, (i) all lands located within the State, the title to which is held in trust by the United States for the benefit of the Band; and (ii) all lands located within the State that are proclaimed by the Secretary of the Interior to be part of the Band’s reservation. The term Indiana Reservation includes any rights-of-way running through the same.
12. “Person” means any individual, sole proprietorship, firm, partnership, corporation, or association.

13. “Retailer” means a Person operating a hotel, bar, restaurant, shop or other retail establishment selling or furnishing goods or services on or within the Indiana Reservation, including the Gaming Authority.
 14. “Sale at Retail” means a retail transaction as defined in the State Sales Tax Act.
 15. “State” means the State of Indiana.
 16. “State Sales Tax” means the sales tax imposed by the State pursuant to the State Sales Tax Act.
 17. “State Sales Tax Act” means the State’s Gross Retail Tax, I.C. § 6-2.5-2.
 18. “State Use Tax” means the use tax imposed by the State pursuant to the State Use Tax Act.
 19. “State Use Tax Act” means the State’s Use Tax, I.C. § 6-2.5-3.
 20. “Tax Code” means this Tax Revenue and Administration Code (Indiana).
 21. “Taxable Sale” means a sale that is not exempt under this Tax Code.
- “Taxpayer” means a Person liable for taxes, penalties or interest imposed under this Tax Code, including Collection Agents pursuant to Chapter VI of this Tax Code.
22. “Tribal Council” means the governing body of the Band established pursuant to Article X of the Constitution.
 23. “Tribal Court” means the Band’s Tribal Court.
 24. “Tribal Entity” means an entity, other than a single Tribal Citizen or an entity wholly owned by the Band, that is wholly owned by any combination of the Band and its Citizens, or is wholly owned by its Citizens.
 25. “Tribal Casino Food and Beverage Tax” means the tax imposed by the Band pursuant to Chapter IV of this Tax Code.
 26. “Tribal Citizen” means an individual who is an enrolled citizen of the Band.
 27. “Tribal Sales Tax” means the tax imposed by the Band pursuant to Chapter III of this Tax Code.

CHAPTER III TRIBAL SALES TAX

1. Rate. For the privilege of conducting Sales at Retail within the Indiana Reservation for a consideration, every Taxpayer that makes Sales at Retail within the Indiana Reservation shall collect a Tribal Sales Tax from the purchaser at a rate of 7 % of Gross Receipts, less deductions allowed in this Tax Code.

2. Exclusions. In computing the amount of Tribal Sales Tax levied under this Tax Code, a Taxpayer shall exclude from the amount of Gross Receipts and shall not collect the Tribal Sales Tax on the following:

(a) Sales of tangible personal property, other than Casino Food and Beverage Sales, that is provided on a Complimentary basis;

(b) Casino Food and Beverage Sales;

(c) Sale at Retail of cigarettes and other tobacco products to a Tribal Citizen;

(d) Sale at Retail of tangible personal property to a Tribal Entity for its use exclusively within the Indiana Reservation;

(e) Sale at Retail of construction materials to a Tribal Entity, provided the sale satisfies the exemption requirements of this Tax Code;

(f) Sale at Retail of tangible personal property to the Band;

(g) Sales at Retail which are deductible from Gross Receipts under this Tax Code; and

(h) The amount received or billed by the Retailer for remittance to an employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer.

3. Legal Incidence. The tax shall be imposed upon the Person purchasing the tangible personal property and shall be collected by the Person selling or otherwise providing the tangible personal property.

4. Returns. Any Retailer subject to the Tribal Sales Tax shall, on or before the twentieth (20th) day following the end of each calendar quarter, complete a return for the preceding quarter on a form prescribed by the Finance Director showing the entire amount of Gross Receipts for the Retailer's business, the allowable deductions, and the amount of Tribal Sale Tax for which the Retailer is liable.

5. Payment. The Retailer shall transmit the return, together with a remittance for the amount of Tribal Sales Tax, to the Finance Director on or before the twentieth (20th) day

of the month following each calendar quarter. The quarterly return shall be signed by the Retailer or the Retailer's duly authorized agent and, if applicable, the person and/or firm preparing the return.

6. Consolidated Returns. Any Person operating two (2) or more businesses located within the Indiana Reservation making Sales at Retail shall file a consolidated return covering all such business activities.

CHAPTER IV CASINO FOOD AND BEVERAGE TAX

1. Rate. For the privilege of conducting Casino Food and Beverage Sales for a consideration, every Taxpayer that sells Casino Food and Beverage within the Indiana Reservation shall collect a Tribal Casino Food and Beverage Tax from the purchaser at a rate of 7% of Gross Receipts from such sales, less deductions allowed in this Tax Code.

2. Exclusions. In computing the amount of Casino Food and Beverage Tax levied under this Tax Code, a Taxpayer shall exclude from the amount of Gross Receipts and shall not collect Casino Food and Beverage Tax on:

(a) Casino Food and Beverages provided on a Complimentary basis; and

(b) The amount received or billed by the Retailer for remittance to an employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer.

3. Legal Incidence. The Casino Food and Beverage Tax shall be imposed upon the Person purchasing the Casino Food and Beverages and shall be collected by the Person selling or otherwise providing the Casino Food and Beverages.

4. Returns. Any Retailer subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar quarter, complete a return for the preceding quarter on a form prescribed by the Finance Director showing the entire amount of Gross Receipts for Casino Food and Beverage Sales for the Retailer's business, the allowable deductions, and the amount of Casino Food and Beverage Tax for which the Retailer liable.

5. Payment. The Retailer shall transmit the return, together with a remittance for the amount of Casino Food and Beverage Tax, to the Finance Director on or before the twentieth (20th) day of the month following each calendar quarter. The quarterly return shall be signed by the Retailer or the Retailer's duly authorized agent and, if applicable, the person and/or firm preparing the return.

6. Consolidated Returns. Any Person operating two (2) or more businesses located within the Indiana Reservation selling Casino Food and Beverage shall file a consolidated return covering all such business activities.

CHAPTER V EXEMPTIONS

Notwithstanding any other provision of this Tax Code, the following shall be exempt from taxation under this Tax Code:

1. All gaming revenue or gaming earnings received by the Gaming Authority.
2. Any other transaction specified as exempt under regulations issued by the Finance Director, provided that such regulations shall not have the effect of making the base for taxable sales subject to the Tribal Sales Tax less inclusive, except for exclusion of Casino Food and Beverage Sales, than that provided by State Law pursuant to the State Sales Tax Act or the State Use Tax Act.

CHAPTER VI COLLECTION AGENTS

1. All Retailers located within the Indiana Reservation who are subject to the taxes levied in this Tax Code are Collection Agents.
2. Every Collection Agent shall:
 - (a) Be responsible for collecting and remitting taxes imposed under this Tax Code;
 - (b) Be responsible for uncollected taxes and any related interest and penalties, and is therefore a Taxpayer.
 - (c) File periodic returns as provided in this Tax Code and in regulations issued by the Finance Director.

CHAPTER VII COMPLIANCE WITH STATE TAX LAWS

1. Income Tax Withholding by Employers. Tribal, Tribal Citizen, and Tribal Entity employers located within the Indiana Reservation shall withhold and remit to the State income tax from all employees who do not reside within the Indiana Reservation.

2. Reporting for Professional Performers. The Gaming Authority will report Gross Receipts and contact information regarding each professional performer in a manner consistent with reporting practices required by the State for non-Tribal casino operators and/or entertainment facilities.

CHAPTER VIII ADMINISTRATION AND ENFORCEMENT

1. Powers and Duties of Finance Director

(a) In regard to matters within the scope of this Tax Code, the Finance Director shall have the powers and duties granted or imposed by this Tax Code, which shall include the following:

- (i) To administer the application and enforcement of this Tax Code;
- (ii) To make recommendations to the Tribal Council regarding amendments to this Tax Code;
- (iii) To demand access to and inspect, examine and audit all papers, books and records of all Persons and entities subject to taxation under this Tax Code, and require verification of any matter affecting the taxation of such Person or entity or the enforcement of this Tax Code;
- (iv) To conduct hearings authorized by this Tax Code and to issue subpoenas and compel the attendance of witnesses, to administer oaths and to require testimony under oath at any such hearing. Any Person making false oath in any matter before the Finance Director is guilty of perjury. Any process or notice may be served in the manner provided for service of process and notices in a civil action in Tribal Court. The Finance Director may pay transportation and other expenses of witnesses as it may deem reasonable and proper;
- (v) To propose regulations, forms and procedures as authorized by or required to implement this Tax Code, provided that any such regulations shall be subject to the approval of the Tribal Council;
- (vi) To receive and investigate complaints of violations of this Tax Code or of regulations promulgated under it, and to refer for prosecution the results of any such investigation;
- (vii) To keep and maintain such files and records as are required by this Tax Code, or as the Finance Director otherwise deems necessary; and

(viii) To take other action necessary and incidental to the enumerated powers and duties.

(b) The Finance Director shall make an annual report to the Tribal Council by April 15 of the each year for the preceding year, with the first report due on April 15, 2019. The report shall include a summary of all tax revenues collected as provided in this Tax Code and all investigative actions completed during the year.

2. Deposit of Funds. The proceeds of each tax imposed by this Tax Code shall be deposited in the general fund or account of the Band.

3. Record Keeping; Financial Standards

(a) All Collection Agents shall maintain financial records in accordance with GAAP, unless otherwise permitted under regulations promulgated by the Finance Director.

(b) All taxes imposed by this Tax Code shall be computed in accordance with GAAP, unless otherwise permitted under regulations promulgated by the Finance Director.

(c) Every Collection Agent shall maintain financial records relating to such taxes for a period of at least three years from the date that a return is filed. All such records shall be subject to audit by the Finance Director and or the Finance Director's agents.

(d) Records shall be separately maintained for items that are claimed exempt on the basis that the transaction occurred in, and the use is exclusively in, the Indiana Reservation.

(e) Tribal, Tribal Citizen and Tribal Entity Retailers shall maintain records regarding Sales at Retail within the Indiana Reservation sales that are exempt from the Tribal Sales Tax under this Tax Code.

(f) With respect to sales on which no tax was collected as provided in this Tax Code, Tribal, Tribal Citizen and Tribal Entity Retailers shall maintain a record of such sales including the date, the name and, if applicable, Tribal identification number of the purchaser, the amount, and for any item of more than \$50.00 or sales of more than \$200.00 in the aggregate, the identification of the items purchased and any other data sufficient to document the exemption.

(g) The Finance Director may issue regulations imposing additional record keeping and reporting requirements on Persons subject to this Tax Code to implement the purpose and intent of this Tax Code.

4. Tax Deficiencies or Overpayments.

(a) If it appears, either from examination of the tax return or from the examination authorized by this Tax Code that any Taxpayer for any tax under this Tax Code has not satisfied its liability under this Tax Code, the tax shall be determined by the Finance Director and such Person shall be notified of the determination. If the amount paid exceeds the correct amount of the tax, the excess shall be credited against a subsequent tax unless a refund is requested by the Taxpayer.

(b) If the amount paid is less than the amount which should have been paid, the deficiency, together with interest at the rate of 1% per month from the time when the tax was due, shall become due and payable after notice as provided in this Chapter.

(c) If any part of the deficiency is due to negligence or intentional disregard of this Tax Code or the regulations promulgated by the Finance Director, but without intent to defraud, there shall be added as a penalty 10% of the total amount of the deficiency, together with interest on the penalty as provided in subsection (b).

(d) If any part of the deficiency is due to a fraudulent intent to evade the tax, then there shall be added as a penalty 100% of the deficiency, together with interest on the penalty as provided in subsection (b).

5. Failure or Refusal to File Return or Pay Tax.

(a) If a Person fails or refuses to file a return or pay the tax as required by this Tax Code, the Finance Director as soon as possible shall assess the tax against such Person and any other Persons liable therefore, and shall notify such Persons of the amount as provided in this Tax Code.

(b) In the case of failure or refusal to file a return or pay the tax required by this Tax Code, within the time prescribed by this Tax Code, there shall be added a penalty of 5% of the tax for each month or fraction of a month during which the failure continues, to a maximum of 100%. In addition to the penalty, there shall be added interest at the rate of 1% per month on the amount of tax from the time the tax was due until the date of payment.

(c) When a tax return is filed or remittance is paid after the time specified by this Tax Code and it is shown to the satisfaction of the Finance Director that the failure was due to reasonable cause and not to willful neglect, the penalty may be waived.

6. Assessment of Tax Upon Information Obtained by Finance Director.

(a) If a Person fails or refuses to make a return, either in whole or in part, or if the Finance Director has reason to believe that any return made does not supply sufficient

information for an accurate determination of the tax due, the Finance Director may obtain information upon which to base an assessment of the tax. The Finance Director or an authorized agent may examine the books, records and papers and audit the accounts of any Taxpayer for the tax or any other records pertaining to the tax. As soon as possible after procuring the information as may be found to be available, the Finance Director shall assess the tax determined to be due and shall notify the Persons liable of the amount of the assessment and the specific reasons for it.

(b) The assessment by the Finance Director shall be final as to any Taxpayer under this Tax Code except as may otherwise be determined under the provisions of this Tax Code.

(c) If a Taxpayer fails to file a return or to keep and maintain proper, accurate, and complete records as prescribed by this Tax Code, the Finance Director may assess, upon the information as is available or may come into the possession of the Finance Director, the amount of the tax due from the Taxpayer. The assessment after notice and conference as provided in this Tax Code shall be deemed to be prima facie correct for the purpose of this Tax Code and the burden of proof of refuting it shall be upon the Taxpayer.

7. Limitation of Actions; Levy; Appeal

(a) A tax deficiency, interest or penalty shall not be assessed for any year after the expiration of three years after the date set for the filing of the annual return for each year or the date the return was filed, whichever is later. If a Person fraudulently conceals any liability for the tax or any part of the tax, the Finance Director within two years of the discovery of the fraud shall assess the tax with interest and penalties as provided in this Tax Code, computed from the date on which the tax liability originally accrued, and the tax, penalties and interest shall become due and payable after notice as provided in this Tax Code. The limitation period will be suspended during the pendency of any hearing or other legal proceedings concerning the deficiency, upon the consent in writing of the Taxpayer, and for any taxable year for which a return is not filed.

(b) Notice of Levy and Conference.

(i) In carrying out the provisions of this Tax Code, the Finance Director after determining the amount of tax due from a Taxpayer shall give written notice to such Person intent to levy the tax. The Taxpayer may request an informal conference with the Finance Director on the question of liability for the assessment if the request is made within 20 days of receipt of the notice. Upon receipt of a request for conference the Finance Director shall set a time and place for the conference and shall give the Taxpayer reasonable notice of the conference.

(ii) The Taxpayer may appear or be represented before the Finance

Director and may present testimony and argument. After the conference the Finance Director shall render a decision in writing setting forth its conclusions and by order may levy any tax, interest and penalty found to be due and payable.

(c) Appeal to the Tribal Court. A Person aggrieved by any determination of tax liability made by the Finance Director may appeal to the Tribal Court. Such an appeal must be filed within 30 days of receipt of the notice of intent to levy tax or, if a conference with the Finance Director was requested, of receipt of the order following the conference.

(d) Tax Credit or Refund.

(i) The Finance Director shall credit or refund all overpayments of taxes, all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that are found unjustly assessed or excessive in amount, or wrongfully collected.

(ii) A Person who claims to have paid a tax which was not due under this Tax Code may, on or before the expiration of four years after the date set for the filing of the annual or final return for the year or the date the tax was paid, whichever is later, petition the Finance Director in writing to refund the amount so paid. If the annual return reflects an overpayment or credit in excess of the tax, the declaration on the return constitutes a claim for refund. If the Finance Director agrees that the Person's claim is valid, the amount of the overpayment, at the request of the claimant, shall be refunded to the claimant or credited against any current or subsequent tax liability. If the Taxpayer disagrees with the Finance Director's conclusion on the matter, the Taxpayer may appeal the matter to the Tribal Court within 30 days after receipt of notice of the Finance Director's decision.

(iii) Interest at the rate of 1% per month shall be added to a refund 45 days after the due date or date the return is filed, whichever is later.

8. Violations. It shall be unlawful and a violation of this Tax Code for any Person to:

(a) Fail or refuse to make a return required by the Tax Code, within the time specified in this Tax Code, or make, aid, abet, or assist another in making a false or fraudulent return or false statement in a return required by this Tax Code with intent to defraud the Band or to evade the payment of the tax, or any part of the tax, imposed by this Tax Code.

(b) Aid, abet, or assist another in an attempt to evade the payment of the tax, or any part of the tax, imposed by this Tax Code.

(c) Make or permit to be made for himself or for any business or association any false return or a false statement in a return, either in whole or in part, required by this Tax Code.

(d) Make, aid, abet, or assist another in making a false or fraudulent certification to the Finance Director that his principal place of residence is located within the Indiana Reservation.

(e) Obtain, aid, abet, or assist another in obtaining a false or fraudulent sales tax exemption with the intent to defraud the Band or to evade the payment of a tax, or any part of the tax, levied under this Tax Code.

(f) Violate any provision of this Tax Code or of regulations promulgated in accordance with this Tax Code.

9. Jurisdiction, Procedure and Penalties.

(a) Jurisdiction is hereby conferred upon the Tribal Court over criminal and civil enforcement actions for violations of this Tax Code.

(b) Without limiting any liability for any tax, penalty or interest owed under this Tax Code:

(i) A violation of this Tax Code committed by a Native American shall constitute a crime punishable by a fine of up to Five Thousand Dollars (\$5,000.00) or imprisonment for not more than one year, or both; and

(ii) A violation of this Tax Code committed by a Person who is not a Native American shall constitute a civil infraction subject to a civil penalty of up to Five Thousand Dollars (\$5,000.00).

10. Enforcement.

(a) The provisions of this Tax Code shall be enforced by Tribal law enforcement officers, and by anyone authorized or deputized to enforce this Tax Code or Tribal law generally by Tax Code or resolution of the Tribal Council.

(b) The Finance Director shall have the authority to authorize special agents to perform services reasonably necessary to conduct investigations within the scope of the Finance Director's authority or to monitor and assure compliance with the provisions of this Tax Code. When acting as a special agent, a Person shall be accorded the privileges and protections of a Tribal law enforcement officer. The activities of special agents shall be under the supervision and the direction of the Finance Director. Nothing in this subsection shall limit the normal law enforcement functions of any special agent, nor of

other Tribal law enforcement officers.

(c) Remedies.

(i) In addition to other remedies set forth in this Tax Code, any property used in the commission of any violation may be forfeited in an action brought by the Band in Tribal Court. Any vehicle used in transporting a violator to or from the location of the violation shall be deemed to have been used in the commission of such violation.

(ii) The remedies in this section are not intended to be exclusive, but shall be in addition to and independent of:

- A. any applicable contractual remedy;
- B. any disciplinary action taken against a violator as an employee; and
- C. any prosecution or other enforcement action under federal or State law or under the provisions of any other Band law, including a prosecution for perjury for false statements on a tax return.

LEGISLATIVE HISTORY

THE "TAX REVENUE AND ADMINISTRATION CODE (INDIANA)" WAS ENACTED ON JANUARY 8, 2018 BY ADOPTION OF TRIBAL COUNCIL RESOLUTION NO. 18-01-08-02.