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TITLE III - TAXATION

CHAPTER 15 - GENERAL PROVISIONS AND DEFINITIONS

Sec. 15.1 Policy and Purpose

The purpose of this Tax Code is to establish a system for the fair and expeditious imposition and administration of taxes by the Pueblo, so as to provide a regular source of revenue to help fund the costs of governmental services to the Pueblo's citizens, to regulate the conduct of persons doing business within Pueblo Lands and to protect and enhance the political integrity, the economic security, and the health and welfare of the Pueblo.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003; amended by Res. No. 21-19, March 26, 2021; approved by Sec'y, May 17, 2021.

Sec. 15.2 Applicability

This Code applies to all persons engaged in activities subject to the taxes provided for herein; *provided* that nothing in this Code shall be construed as imposing a Tax on the Pueblo or the federal government.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 15.3 Definitions

As used in this Code, the following capitalized terms shall have the following meanings:

A. "Administrative Costs" means those costs and expenses reasonably incurred by the Tax Administrator in collecting Taxes from a Taxpayer who fails to pay any Taxes, penalties, or interest at the time due, including but not limited to attorney's fees, court costs, filing fees, costs of collection outside the jurisdiction of the Pueblo, and expenses for experts, accountants, appraisers and others;

B. "Assessment Date" means each January 1st or such other date as is specified in this Code for an assessment of the taxable value of an activity or land use;

C. "Business" means any commercial activity engaged in or caused to be engaged in within Pueblo Lands for the purpose of direct or indirect benefit, profit, gain, or advantage to any person or entity, and shall include the delivery on Pueblo Lands of any good or service by a person or entity that does not have a physical presence on Pueblo Lands, as well as the delivery to a person or entity located on Pueblo Lands of any digital goods or services, including software, applications, digital media, video, music, video games, e-books, webinars, online classes, and online trainings, as well as licenses of such digital goods and services;

D. "Code" means the Pueblo of Santa Clara Tax Code, unless otherwise specified.

E. "Commissioner" means each duly appointed member of the Tax Commission;

F. “Construction” means building, altering, repairing, or demolishing in the ordinary course of business any improvement on real property. “Construction” also means leveling or clearing land, excavating earth, drilling wells of any type including, but not limited to seismograph shot holes or core drilling, or similar work;

G. “Contractor” means any Person who contracts to perform Construction as a general contractor or as a subcontractor;

H. “Court of competent jurisdiction” means any court properly having jurisdiction of the subject matter of an action;

I. “Gross Receipts” means the total amount of money or value or other consideration received by any Business conducted within the exterior boundaries of the Pueblo. Gross Receipts does not include any amount received as gross receipts or sales tax imposed by the State of New Mexico or its political subdivisions;

J. “Indian” means any member of a federally-recognized Indian tribe and any other Person recognized by federal law as an Indian for any purpose;

K. “Lease” means a written agreement with the Pueblo or a tribal member assignee of the Pueblo, as lessor, whereby the lessee is granted a right to possession of designated Pueblo lands, for a specified purpose and duration; or an assignment of Pueblo lands to a Pueblo member;

L. “Levy” means the involuntary taking or surrender of any property or rights to property belonging to a delinquent Taxpayer. “Levy” also means the exercise of the Pueblo’s legislative authority in determining that a Tax shall be imposed;

M. “License” means a formal permission to carry out a Business authorized under this Code. A License shall be a revocable, nontransferable privilege to do a specified thing;

N. “Manufacture” means to combine or process components or materials to increase their value for Sale in the ordinary course of Business, but does not include Construction;

O. “Natural Resource” means any material in its native state that, when extracted, severed, or developed has economic value, including but not limited to water, sand and gravel, coal, oil and gas, and timber;

P. “Notice of Assessment” means a written demand for Taxes, including any interest, penalties and Administrative Costs authorized by this Code, provided to a Taxpayer;

Q. “Owner” means any Person who owns or enjoys an interest in lands, whether of the whole interest or less than whole, as an Owner, grantee, lessee, permittee, assignee, sublessee, licensee, transferee, joint venturer, shareholder, partner, member, or otherwise;

R. “Person” means any natural person, corporation, partnership, limited liability company, joint venture, association, club, company, estate, trust, political subdivision,

government agency, or other entity of any kind;

S. “Personal Property” means everything that is subject to ownership and that is not Real Property.

T. “Property” means Real Property, Personal Property, licenses, franchises, patents, trademarks, and copyrights.

U. “Possessory Interest” means the interests and rights in Property obtained by a Lease or occupancy (whether authorized or not), including any and all improvements and additions thereon.

V. “Pueblo” means the Pueblo of Santa Clara, including any office or agency thereof that performs governmental functions of the Pueblo.

W. “Pueblo Lands” mean all lands and waters within the exterior boundaries of the Pueblo’s Spanish grant and of lands held by the United States in trust for the Pueblo, notwithstanding the issuance of any deed, patent, Lease or Right-of-Way.

X. “Real Property” means land, and generally whatever is built or growing on it.

Y. “Retailer” means a Person engaged in the Business of making Sales at retail.

Z. “Retail Sale” means any Sale of Services or Personal Property that is intended to be to the ultimate user or consumer thereof;

AA. “Sale” means any transaction whereby title or possession, or both, of Personal Property is transferred by any means whatsoever, for a consideration, or any transaction whereby services are rendered for consideration or are sold. Such consideration may be either in the form of a price in money, rights, or property, or by exchange or barter, and may be payable immediately, or in the future, or by installments.

BB. “Service” means any activity or conduct engaged in for consideration, which involves predominantly the performance of a Service as distinguished from selling or leasing Property.

CC. “Tax Administrator” means the Tax Administrator of the Pueblo.

DD. “Tax Commission” or “Commission” means the Santa Clara Tax Commission duly appointed by the Tribal Council to administer and enforce this Code.

EE. “Tax Office” means the Santa Clara Office of the Tax Administrator responsible for the day-to-day administration of this Code, under the supervision and control of the Tax Administrator.

FF. “Taxpayer” means a Person who pays a Tax, who is subject to and liable for a Tax, who is responsible for withholding and payment or for collection and payment of any Tax, or who engages in an activity or land use that is subject to Tax under this Code;

GG. “Tax-Sharing Agreement” means any agreement entered into between the Commission, on behalf of the Pueblo, and the New Mexico Taxation and Revenue Department, pursuant to New Mexico law and this Code, providing for the administration of gross receipts taxes imposed by the State and the Pueblo on Taxpayers situated on Pueblo Lands, the equalization of gross receipts tax rates applicable to such Taxpayers, the granting of mutual tax credits so as to avoid double taxation of such Taxpayers, and the sharing of gross receipts tax revenues derived from such Taxpayers, and for other purposes;

HH. “Tribal Council” means the Tribal Council of the Pueblo;

II. “Tribal Court” means the Pueblo of Santa Clara Tribal Court;

JJ. “Tribal Member” means any natural person who is enrolled or otherwise recognized by the Tribal Council as a member of the Pueblo;

KK. “Utility” means any governmentally regulated Business or Service that is engaged in regularly supplying some commodity or Service of public consequence; including, without limiting the foregoing, any Business or Service relating to cable television or other telecommunication lines, railroads, gas lines, telephone lines or cellular telephone service, telegraph lines, electrical transmission lines, sewer lines, and water lines;

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec’y, July 1, 2003; amended by Res. No. 08-04, Feb. 19, 2008; amended by Res. No. 21-19, March 26, 2021; approved by Sec’y, May 17, 2021.

Sec. 15. Tax Revenues Generally; Budget; Disposition of Tax Revenues

A. Tax Revenues Generally. Except as otherwise provided in this Section, all Tax revenues collected through enforcement of this Code shall be deposited into the general fund of the Pueblo, and all such revenues shall be utilized or expended in such manner as is determined by the Tribal Council.

B. Budget for the Administration of the Tax Office. The Commission shall, by no later than the 30th day of September of each year, submit to the Tribal Council a proposed budget for the operations of the Tax Office and the Commission in administering this Code. The Tax Office shall be operated in accordance with the budget as approved by the Tribal Council.

C. Deposit of Tax Payments under Protest. All Taxes paid under protest shall be deposited in an interest-bearing account separate from the account(s) in which other Tax monies are deposited, and shall be maintained in such account until the protest is finally disposed of, as provided in Chapter 4 of this Title.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec’y, July 1, 2003.

Sec. 15.5 Severability

If any provision, Section, Chapter, or Title in this Code or application thereof to any situation or Person shall be held invalid or unenforceable by the final decision of any federal court having jurisdiction, or by the Tribal Court, such holding shall not invalidate or render

unenforceable any other provision of this Code or its application to other situations or Persons.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 15.6 Abatement

The Commission shall have the authority to abate any Tax imposed under this Code as to any Taxpayer in return for other consideration or payments in lieu of Taxes, or as to any class of Taxpayers, upon a finding that such abatement is in the best interest of the Pueblo.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

CHAPTER 16 - TAX COMMISSION AND TAX ADMINISTRATOR

Sec. 16.1 Tax Commission

A. Creation of Tax Commission. There is hereby created the Santa Clara Tax Commission, a governmental agency of the Pueblo, possessing all of the powers, duties, rights, and functions herein defined and as are now and may be hereinafter conferred by the laws of the Pueblo.

B. Composition of Tax Commission; Appointment Terms. The Tax Commission shall consist of no fewer than three and no more than five persons, each of whom shall be appointed by the Tribal Council to serve a four-year term. The Terms of Commissioners shall, to the extent feasible, be staggered so as to maintain continuity in the Commission. Notwithstanding the actual term of a Commissioner, each Commissioner shall serve until his or her successor is duly elected and qualified or until his or her removal, resignation, or death. Commissioners shall be eligible for reappointment without limitation.

C. Qualifications. The members of the Tax Commission shall have the following qualifications:

1. They shall be at least twenty-one (21) years of age, be of high moral character and integrity, and never have been convicted in a court of a crime involving dishonesty or moral turpitude, and be physically capable of carrying out their duties under this Section;
2. The Commissioners shall be Tribal Members who have sufficient education and experience to qualify them for overseeing the administration of this Code;
3. At least one Commissioner shall have prior accounting, banking, and/or tax administration experience; The Tribal Council shall have ultimate authority to determine whether a person is qualified to be a member of the Commission under the provisions of this Section.

D. Chairman; Records. The Commission shall annually select one of its members to serve as Chairman, and another member to serve as Vice Chairman. The Chairman, or the Vice Chairman in his or her place, shall preside at meetings, execute documents on behalf of the Commission, represent the Commission before the Tribal Council and in other official settings, with the Tax Administrator prepare the agenda for Commission meetings, and have such other

responsibilities as the Commissioners may from time-to-time specify. Records of the Commission shall be maintained by the Tax Administrator.

E. Meetings; Quorum; Written Consents.

1. The business of the Tax Commission shall be conducted at meetings duly called upon written notice and at which a quorum shall be present. Meetings of the Tax Commission shall be called by the Chairman on his or her own initiative or upon the written request of at least two Commissioners. The Tax Commission shall keep minutes of each meeting.

2. Except as otherwise provided in this Code, a quorum shall consist of a majority of the Commissioners then serving on the Tax Commission; *provided* that, in no event shall a quorum be fewer than two Commissioners. Any substantive action of the Tax Commission must be taken by the affirmative vote of at least a majority of the Commissioners present at a duly called meeting. A quorum once attained at a meeting of the Tax Commission shall be deemed to continue until adjournment notwithstanding the voluntary withdrawal of enough Commissioners to leave less than a quorum. If less than a quorum is present at any meeting, a majority of the Commissioners present may adjourn the meeting. A Commissioner who is present at a meeting of the Tax Commission at which action on any matter is taken shall be presumed to have assented to the action taken unless his or her abstention or dissent is entered in the minutes of the meeting.

3. Any action that may be taken at a meeting of the Tax Commission may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Commissioners. The consent shall have the same effect as a unanimous vote.

4. Except as otherwise restricted by this Code, Commissioners may participate in a meeting of the Tax Commission by means of a conference telephone or similar communication equipment by which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute attendance as if the Commissioner were present in person at the meeting.

5. The Tax Administrator shall attend all meetings of the Commission, together with such members of his staff as he deems appropriate, and shall cause a written record of the official actions taken at each meeting to have ready and, upon its approval by the Commission, to be maintained in the Tax Office.

6. Meetings of the Commission shall be open to the public unless the Commission shall determine, in its sole discretion, that a meeting should be closed.

F. Removal: Resignations and Vacancies.

1. Any Commissioner may be removed from the Tax Commission by a majority vote of the Tribal Council for good cause after a majority of the members of the Tax Commission recommends said removal, or if the Tribal Council, by a vote of three-fourths (3/4) of the Tribal Council members at a meeting at which a quorum is present, determines that it is in the best interest of the Pueblo. "Good cause" includes but is not limited to dereliction of duty, negligence, malfeasance in office, becoming ineligible for appointment to the Commission as set forth in this

Code, or failure to attend two duly called Tax Commission meetings within a six (6) month period without justification. A Commissioner may resign at any time by giving written notice to the Commission and to the Secretary of the Tribal Council.

2. A resignation shall become effective at the time specified therein; the acceptance of such resignation shall not be necessary to make it effective. Any vacancy on the Tax Commission, howsoever caused, will be filled for the unexpired portion of that term by the Tribal Council according to the appointment procedures prescribed in this Code.

G. Disqualification of Commissioners.

1. A Commissioner shall disqualify himself or herself from making any Tax Commission decision in a proceeding in which he or she has a direct economic interest or when a Taxpayer involved in the proceeding is a relative of the Commissioner by marriage or blood in the first or second degree.

2. Any Taxpayer may seek to disqualify a Commissioner from hearing a proceeding involving that Taxpayer by filing a Petition for Disqualification with the Tax Commission requesting that such Commissioner be disqualified and stating the reasons for such disqualification. The Petition must identify itself as a Petition for Disqualification, declare the relief sought, state the reasons for such disqualification, and include a complete statement of the facts supporting the relief sought, together with any information or documents necessary to support such facts. In its discretion, the Tax Commission may hold a hearing on such Petition, in which case, the notice and hearing procedures set forth in this Code for appeals to the Tax Commission shall apply. The Tax Commission's denial of a Petition for Disqualification shall be final and subject to appeal only as provided for in this Code.

3. If a Commissioner should disqualify himself or herself, or if the Tax Commission grants a Petition for Disqualification of a Commissioner, the Tax Commission shall proceed to decide the matter at issue, and the disqualified Commissioner shall not participate or be counted for purposes of determining a quorum.

H. Compensation of the Tax Commission. The Commissioners may receive such salary or compensation as may be established in the budget approved by the Tribal Council.

I. Powers of the Tax Commission. The Tax Commission is charged with the administration and enforcement of this Code and, incidental thereto, shall have the power and authority to:

1. Supervise the Tax Administrator;

2. Administer oaths, conduct hearings to resolve appeals by Taxpayers from actions of the Tax Administrator, make decisions, judgments, and determinations permitted or required by this Code, and, by subpoena, compel the attendance and testimony of persons and the production of any books, records, and papers of any Taxpayer, and examine under oath, either orally or in writing, any Taxpayer or agents, or any other witness;

3. Promulgate such regulations and amendments thereto as maybe necessary and convenient for the administration of this Code;

4. Recommend to the Tribal Council proposed amendments to this Code;

5. Prepare and submit to the Tribal Council each year a proposed budget for the operation of the Tax Office and the Commission;

6. Approve and execute on behalf of the Pueblo any agreement between the Pueblo and the New Mexico Department of Taxation and Revenue or any other governmental entity authorized by New Mexico law and this Tax Code to govern the administration of taxes within Pueblo Lands;

7. Adjust the rate of the Gross Receipts Tax imposed by this Code, as necessitated by the terms of a Tax-Sharing Agreement that is in effect;

8. Adopt, by regulation, such tax credits or other administrative provisions as may be required for the implementation of or compliance with any Tax-Sharing Agreement that is in effect.

9. Exercise all other authority delegated by law or as may reasonably be necessary to the administration and enforcement of this Code.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003; amended by Res. No. 21-19, March 26, 2021; approved by Sec'y, May 17, 2021.

Sec. 16.2 Office of the Tax Administrator

A. Office of the Tax Administrator Created. There is hereby created the Office of the Tax Administrator, a governmental agency of the Pueblo, possessing all of the powers duties, rights, and functions as are now and may be hereinafter conferred by this Code, the Tax Commission, or the Tribal Council. The Office of the Tax Administrator shall be responsible for the day-to-day administration of this Code, and shall carry out such duties as are conferred by this Code or are delegated by the Tax Commission or the Tribal Council. The Tax Commission, subject to limitations imposed by the budget approved by the Tribal Council, shall prescribe the internal organization and staff size of the Office of the Tax Administrator. The Office of the Tax Administrator will be located at the tribal offices of the Pueblo. The office will be open during normal working hours, or otherwise as posted, to accept payments, filings, reports, notices, and other communications or materials.

B. Tax Administrator. There is hereby created the position of Santa Clara Tax Administrator, who shall be an employee of the Pueblo and subject to the direction and supervision of the Tax Commission.

C. Manner of Appointment: Compensation. The Tax Commission shall hire the Tax Administrator and establish his or her salary, in accordance with the budget approved by the Tribal Council.

D. Qualifications. The Tax Administrator shall have the following qualifications:

1. He or she shall be at least twenty-one (21) years of age, be of high moral character and integrity, never have been convicted of a crime involving dishonesty or moral turpitude and be physically capable of carrying out his or her duties under this Section;
2. He or she must have sufficient experience to enable him or her to oversee tax practices and procedures and to make sound judgments;
3. He or she must possess a college degree, preferably in business management, accounting, banking, or law, or at least five (5) years of work experience in one or more of those fields.

E. Powers of the Tax Administrator. The Tax Administrator is charged with overseeing the day-to-day management of the Tax Office, including the following specific powers:

1. To assess, collect, and issue receipts for Taxes imposed or authorized by this Code;
2. To represent the Tax Office in hearings before the Tax Commission, Tribal Court, and any other court of competent jurisdiction, and present witnesses and evidence and bring any necessary actions for the enforcement of this Code and the collection of any assessed and unpaid Taxes;
3. To take any necessary actions to foreclose any lien imposed on any property for non-payment of Taxes;
4. To prepare and make available to Taxpayers and other persons standard forms and instructions thereto to carry out the intent of this Code and regulations promulgated thereunder;
5. To examine and investigate the places of business, equipment, facilities, Personal Property, books, records, papers, vouchers, accounts, documents, and financial statements of any Taxpayer, upon reasonable notice, or, failing to obtain the concurrence of the Taxpayer, at any time pursuant to a search warrant issued by the Tribal Court or other court of competent jurisdiction;
6. To administer oaths, conduct formal conferences, and, by subpoena, compel the attendance and testimony of persons and the production of any books, records, and papers of any Taxpayer, and examine under oath, either orally or in writing, any Taxpayer or agents, or any other witness;
7. To compromise and settle claims of legitimate controversy arising from the application of this Code by written agreement with a Taxpayer; *provided* that such agreement adequately protects the interests of the Pueblo and complies with the provisions of this Code;

8. To prepare for the Tax Commission proposed regulations and amendments thereto as may be necessary and convenient for the administration of this Code;
9. To promulgate and enforce written rulings and orders as may be necessary and convenient to enforce this Code;
10. To provide to Taxpayers, upon request, copies of regulations, rulings, and orders affecting the Tax liability of such Taxpayers;
11. To recommend to the Tax Commission proposed amendments to this Code;
12. In accordance with the directives of the Tax Commission and subject to the budget approved by the Tribal Council, to hire, train, supervise and discipline, as necessary, the staff of the Tax Office, and to oversee the management of that Office;
13. To negotiate agreements with the New Mexico Department of Taxation and Revenue or any other governmental entity authorized by New Mexico law and this Tax Code to govern the administration of taxes on Pueblo Lands and present to the Commission for approval any form of agreement authorized by New Mexico law and this Code;
14. To exercise all other authority as conferred by the Tax Commission or as may reasonably be necessary to the administration and enforcement of this Code.

In carrying out the foregoing powers, the Tax Administrator may act personally or through staff or legal counsel employed or retained by the Tax Office.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 16.3 Bonds

The Tax Administrator and selected employees of the Tax Office shall be bonded in the performance of their duties and safekeeping of all funds and documents entrusted to their care, in an amount set by the Tax Commission.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 16.4 Bookkeeping and Records

A. Bookkeeping. The Tax Administrator shall establish and keep such financial records and books as may be necessary to account for all Taxes and other monies received using generally accepted accounting standards. Separate books will be maintained for each type of Tax imposed.

B. Taxpayer Records. The Tax Administrator shall keep and maintain accurate and complete records which reflect all taxes, penalties, interest, and Administrative Costs levied, due, and paid; assessments, notices, and all other official transactions, communications, or actions by the Tax Administrator and Tax Commission and responses, if any, from Taxpayers. Such records shall be subject to audit at any time, upon the direction of the Tax Administrator, Tax

Commission, or the Tribal Council. The Tax Administrator shall retain all such records for at least seven (7) years.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003; amended by Res. No. 21-19, March 26, 2021; approved by Sec'y, May 17, 2021.

Sec. 16.5 Promulgation of Regulations

A. Notice. The Tax Commission shall publish proposed regulations in order to provide interested parties an opportunity to comment. The notice will invite written comments and give a deadline for their submission not less than thirty (30) days after the first publication of notice. The Tax Commission may, but is not obligated to, hold a public hearing on any proposed regulations; and if so shall make prior public announcement of the date, time and place of any such hearing.

B. Publication. Publication of a notice requires publication in the legal section of a newspaper of local circulation at least once a week for three (3) consecutive weeks and further requires a posting of the notice in at east three (3) conspicuous public places on the Reservation. The notice shall identify or otherwise describe the content of the proposed new regulations.

C. Effective Date. A regulation will become effective upon its approval by resolution of the Tax Commission on the date specified in the resolution.

D. Promulgation. A copy of all regulations adopted will be filed and made available for public inspection at the Office of the Tax Administrator, and the Tax Administrator shall endeavor to provide copies of relevant regulations to Taxpayers affected by them, or their representatives.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 16.6 Rulings; Instructions; and Orders

A. Rulings. The Tax Administrator is authorized to issue rulings, which are written statements of limited application to one or a small number of Taxpayers, interpreting this Code and the regulations of the Commission. Rulings are ordinarily issued in response to a request by a Taxpayer for clarification of the consequences of a specified set of circumstances. A ruling shall be reviewed by the Pueblo's General Counsel before being issued. The Tax Administrator shall maintain a duplicate official set of current and superseded rulings. The extent to which a ruling will have retroactive effect shall be stated and, if no such statement is made, it will be applied prospectively only.

B. Instructions. The Tax Administrator is authorized to issue instructions, which are written statements or directives of the Tax Administrator not dealing with the merits of any Tax but otherwise aiding the reporting and payment of the Taxes and the accomplishment of the duties of the Tax Administrator hereunder.

C. Orders. The Tax Administrator and Tax Commission are authorized to issue written statements implementing a decision after a formal conference or hearing.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 16.7 Investigative Authority

A. Subpoenas. The Tax Administrator and Tax Commission are authorized to issue subpoenas to allow them or their authorized representative to examine equipment, records, books, information, or other evidence; to require the production of any pertinent records, books, information, or other evidence; and to require the presence and testimony under oath of any Person concerning the subject matter of any tax inquiry, which subpoenas may be executed anywhere within the Pueblo Lands.

B. Form of Subpoenas. A subpoena shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the conference or hearing at which the Person to whom the subpoena is directed is required to attend and give testimony, the nature of the inquiry or investigation, and the consequences of failure to obey the subpoena, and shall bear the signature of either the Tax Administrator or the Chairman of the Tax Commission. Service of a subpoena shall be made by delivering or mailing, certified/return receipt requested, a copy to the Person named therein; service may be made by delivering or mailing, certified/return receipt requested, a copy to the individual last designated by the Taxpayer to receive notice at the address shown on the designation. No subpoena shall be made returnable less than ten (10) days from the date of service. Proof of service shall be made by filing with the Office of the Tax Administrator a copy of the notice along with the date, manner of service, and name of the Person served, certified by the Person who made service.

C. Failure to Comply with a Subpoena. If any Person neglects or refuses to comply with the directives of a properly served subpoena, the Tax Administrator or Tax Commission may invoke the aid of the Tribal Court to enforcement the subpoena. As it deems appropriate, the Tribal Court shall issue its order requiring the Person to appear and testify or produce books or records and may, upon failure of the Person to comply with the order, cite the Person for contempt and impose appropriate sanctions.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003; amended by Res. No. 21-19, March 26, 2021; approved by Sec'y, May 17, 2021.

Sec. 16.7A Cooperation with Tax Administrator

Directors and managers of all Pueblo programs, agencies, businesses, boards, commissions, authorities and Pueblo-owned entities shall promptly provide the Tax Administrator the names and contact information for all vendors, contractors, and others who sell goods or services to the Pueblo program, agency, business, board, commission, authority, or Pueblo-owned entity, and sufficient information about the transaction to enable the Tax Administrator to determine whether a tax under this Code applies to the transaction.

Enacted by Res. No. 21-19, March 26, 2021; approved by Sec'y, May 17, 2021.

Sec. 16.8 Sovereign Immunity

The Tribal Council hereby waives the sovereign immunity of the Tax Administrator and Tax Commission for the express, sole, and limited purpose of allowing review of actions and decisions of the Tax Administrator by the Tax Commission and of allowing review of actions and decisions of the Tax Commission by the Tribal Court as provided for in this Code; *provided* that, any such appeals must be timely and properly filed; and *provided further*, that such waiver is made only to the extent necessary for the determination of rights and obligations under this Code and any regulations promulgated hereunder and does not waive immunity with respect to any suit against the Pueblo, the Commission, the Tax Administrator or any contractor or employee of the Tax Office for monetary damages. This waiver is strictly limited and specifically does not waive the sovereign immunity of the Tribal Council, Pueblo, or of any other commission, agency, officer, employee, or agent thereof.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 16.9 Confidentiality

A. All records related to Taxpayers shall be confidential and not open to public inspection. No Commissioner or former Commissioner, or employee or former employee of the Tax Office shall disclose to any Person any information contained in the return of any Taxpayer made pursuant to this Code, or any other information about any Taxpayer acquired as a result of his or her employment by the Pueblo except:

1. To the Taxpayer or to the Taxpayer's authorized representative upon the Taxpayer's written request;
2. To an employee of the Pueblo or a member of the Tribal Council authorized by the Tax Commission to obtain such information for use in connection with a governmental function; *provided* that such employee or member of the Tribal Council shall not reveal such information except as otherwise provided for in this Section;
3. To authorized representatives of an Indian nation, tribe, or band, pursuant to the terms of a written reciprocal agreement entered into with the Indian nation, tribe, or band for the exchange of such information for tax purposes only; *provided* that the Indian nation, tribe, or band has enacted a confidentiality law similar to this Section;
4. To an authorized representative of the State of New Mexico for tax purposes only; *provided* that the state has entered into a written reciprocal agreement with the Pueblo for the exchange of such information and that the state has enacted a confidentiality law similar to this Section;
5. To a federal agency pursuant to the terms of a written reciprocal agreement entered into with the federal government for the exchange of such information;
6. To the Bureau of Indian Affairs for use in audits of rentals, royalties, fees, and other payments due the Pueblo under land Sale, land Lease, mineral or natural resource

development, or other land use contracts;

7. To a court of the Pueblo or other court of competent jurisdiction:

a. in response to an order thereof in an action relating to Taxes or in which a Taxpayer has placed his or her own liability for Taxes at issue and to which the Tax Administrator or Tax Commission is a party; or

b. in any action in which the Tax Administrator is attempting to enforce this Code or to collect a Tax;

8. In recording, executing upon, or releasing Tax Liens on the property of a Taxpayer or collecting Taxes by Levy upon the property or rights to property of a Taxpayer;

9. For statistical releases, in such a manner that the information revealed is not identified as applicable to any individual Taxpayer;

10. To a purchaser of a Business or assignee of a Possessor)' or Non-Possessory Interest, the amount and basis of any unpaid assessment of Tax for which the purchaser's seller or assignor is liable;

11. Upon written request, to a child support enforcement bureau of any jurisdiction, the last known address with date of all names certified to the Tax Administrator as being absent parents of children receiving public financial assistance; *provided* that such child support enforcement bureau agrees in writing that its personnel will use such information only for the purpose of enforcing the support liability of such absent parents and shall not use the information or disclose it for any other purpose; and

12. The Tax Administrator may answer all inquiries concerning whether a Person is or is not a registered Taxpayer.

B. The Tax Administrator may enforce Section 16.9 by filing an action in the Tribal Court. The Tribal Court may grant injunctive relief and/or impose a civil fine of no more than one thousand dollars (\$1,000) on any person who violates the confidentiality provisions of Section 16.9.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003; amended by Res. No. 21-19, March 26, 2021; approved by Sec'y, May 17, 2021.

CHAPTER 17 - TAXPAYER REGISTRATION, OBLIGATIONS

Sec. 17.1 Taxpayer Records

Every Taxpayer shall maintain accurate and complete records relevant to the reporting and paying of Taxes assessed by this Code. Taxpayers shall retain their records for at least seven years beyond the date of payment to which they relate, or if no payment is due, at least seven years beyond the Assessment Date of a taxable year. Upon at least 48 hours prior written notice, such records shall be subject to inspection by the Tax Administrator or his or her designated

representative during the normal business hours of the Person whose records are to be inspected.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 17.2 Registration and Information Required by Request

A. Taxpayer Registration and Requests for Taxpayer Information. Every Taxpayer shall register and file with the Tax Administrator on the forms, at the times and in the manner determined by the Tax Administrator and the Tax Commission, such information as the Commissioner or the Administrator may reasonably require.

B. Failure to Register or Provide Information. If a Taxpayer fails to comply with a request for registration and/or information or documents within its possession or control, the Tax Administrator may proceed to assess Taxes without that information or documentation. In that event, the Notice of Assessment may not be challenged by the Taxpayer.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 17.3 Place and Manner of Filing and Payment

Taxpayers and other persons making filings and payments under this Code must comply with the following:

A. Place of Filing. On or before the date due, all filings and payments must be delivered to the Office of the Tax Administrator or mailed to:

Office of the Tax Administrator
Pueblo of Santa Clara
P.O. Box 580
Española, New Mexico 87532

B. Payment. Payment of the total amount of all Taxes due shall precede or accompany each required filing. Delivery to the Tax Administrator of a check that is not paid upon presentment does not constitute payment.

C. Payment by Wire Transfer. Upon the prior written approval of the Tax Administrator and in accordance with the written forwarding instructions of the Tax Administrator, a Taxpayer may pay any Tax due by a recognized wire transfer system to the financial institution designated by the Administrator for receipt of such payments.

D. Application of Payments. Any payment received by the Tax Administrator will be applied first in satisfaction of any Administrative Costs, second in satisfaction of any penalties, third in satisfaction of any interest, and lastly, in satisfaction of the Tax due. If any Tax remains unpaid, the Tax Administrator will issue a Notice of Non-Compliance and/or Assessment reporting the unpaid amounts, a description of the application of any payment made hereunder, and the resulting status of the Taxpayer's accounts.

E. Due Date. Due dates are those stated in this Code and on the forms, instructions, and

regulations issued hereunder. If a due date falls on a Saturday, Sunday, or a legal holiday of the Pueblo, then the due date will be the next working day. When a Taxpayer acts by U.S. mail rather than another form of delivery, the date of the delivery to the Tax Administrator shall be determined by the postmark; *provided* that the date of delivery to the Tax Administrator by self-metered mail shall be determined by the metered date only if such mail is received within five (5) days of the metered date.

F. Rounding. The Tax Commission or Tax Administrator may require or permit rounding of amounts of money to the nearest whole dollar.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 17.4 Extension of Time for Filing and Payment

Before a filing or Tax is due, a Taxpayer may file a written request with the Tax Administrator for an extension of time within which to file a report or to make a payment. The Tax Administrator, in his or her discretion, may grant or deny a request for an extension and shall notify in writing the Taxpayer of such decision.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 17.5 Designation of Individual for Purposes of Notice and Service; Notice and Service; Failure of Notice

A. Designated Individual. Each Taxpayer who is not a natural person must designate and provide to the Tax Administrator the name, mailing address, street address, and telephone number of an individual for purpose of notice and service.

B. Notice and Service. Except as otherwise provided in this Code, any notice or service required may be given:

1. to a Taxpayer by mailing the notice or documents to the individual last designated by the Taxpayer at the address shown on the designation; *provided* that if a Taxpayer has not designated an individual for purpose of notice and service, notice may be given by mailing to any Person having a property interest in the Business or activity subject to Tax under this Code or to a Person holding a permit or License for the conduct of activity that is subject to Tax under this Code; and

2. to any other Person by mailing the notice or documents to such Person at his or her last known address. The foregoing is not intended to exclude the use of other methods of giving notice or service that comports with due process under applicable laws of the Pueblo or federal law, including but not limited to personal service or publication.

C. Failure of Notice. Failure of the Tax Administrator or Tax Commission to mail or of a Taxpayer to receive any notice, assessment, bill, or other communication will not affect the Taxpayer's liability for a Tax and any interest, penalty, or administrative cost related thereto.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 17.6 Delinquent Taxpayer

Any Taxpayer who fails to file a required tax reporting form or fails to pay taxes due, or to whom Taxes have been assessed and who does not make payment, before thirty (30) days after the due date or any extensions thereof, or fails to file a timely Protest of Assessment and make a payment under protest, or otherwise fails to furnish timely security for payment, becomes a delinquent Taxpayer and remains such until payment of the total amount of all such Taxes including penalty and interest. If a Taxpayer files a Protest of Assessment, the Taxpayer nevertheless becomes a delinquent Taxpayer upon the Taxpayer's failure to appear at any conference or hearing, failure to make a payment under protest, or failure to perfect an appeal from any decision or part thereof adverse to the Taxpayer to the next higher appellate level as provided in this Code. A delinquent Taxpayer may in the discretion of the Tax Administrator, have his or her tribal business license suspended for a period of time, or revoked.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 17.7 Interest

A. Imposition of Interest on Taxes. All Taxes, fees, or other charges not paid when due shall bear interest from the date such Taxes, fees, or charges become due until the date paid. Interest shall be imposed on any unpaid amount from the date the payment was due, without regard to any extension of time or stay of payment, to the date payment is received.

B. Rate of Interest. The annual rates of interest shall be as follows until otherwise established in the regulations:

1. Interest due to the Pueblo shall be computed at the rate of one and one-fourth percent (1 1/4% or 1.25%) per month or any fraction thereof, except that if the amount of interest due at the time payment is made is less than one dollar (\$1.00), no interest shall be due.

2. Notwithstanding the above, if demand is made for the payment of any Tax, and if such amount is paid within ten (10) days after the date of such demand, no interest on the Tax so paid shall be imposed for the period after the date of demand.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 17.8 Charges for Administrative Costs

The Tax Administrator and the Tax Commission may charge Administrative Costs to any Taxpayer as to whom the Tax Office must take affirmative steps to collect Taxes that are due.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 17.9 Penalties

A. A Taxpayer who, without deliberate intent to evade a tax, fails due to negligence or disregard of the requirements of this Code or of the regulations issued hereunder to pay a tax when due, or to file a report when due, is liable to pay a penalty in the amount of two percent

(2%) of the amount of Tax due per month, for each month or portion thereof from the due date to the date of payment, but not to exceed ten percent (10%) of the amount of the Tax due. In the event the penalty is for failure to file a report or return, and no Tax is due, the amount of the penalty shall be ten dollars (\$10.00) per month from the due date to the date of filing.

B. A Taxpayer who, with deliberate intent to evade a tax, fails to pay a tax when due or to file a report when due, is liable to pay a penalty in the amount of fifty percent (50%) of the tax due, or a minimum of one hundred dollars (\$100.00), whichever is greater.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 17.10 Waiver of Interest, Penalty, or Administrative Costs

For good cause shown, the Tax Administrator may waive in writing the imposition of all or part of any interest, penalty, or Administrative Costs assessed against a Taxpayer.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

CHAPTER 18 - ADMINISTRATIVE PROCEEDINGS

Sec. 18.1 Administrative Remedies

Neither the Tax Administrator nor the Tax Commission shall have jurisdiction to entertain any proceeding by a Taxpayer in which the Taxpayer questions the Taxpayer's liability for any Tax or the application to the Taxpayer of any provision of this Code or any regulations promulgated hereunder, except in accordance with the provisions of this Chapter.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 18.2 Notice of Assessment

Whenever the Tax Administrator becomes aware of information indicating that a Taxpayer owes and has failed to pay any Tax, the Tax Administrator shall send such Taxpayer a Notice of Assessment, notifying the Taxpayer of the type of Tax due, the period of time or specific transaction or transactions to which the Tax pertains, and the amount of the Tax due, together with all applicable penalties and accrued interest. The total amount due as set forth in the Notice of Assessment shall be paid in full by no later than thirty (30) days from the date of the Notice of Assessment, unless within such time, or an extension of such period granted as is provided herein, the Taxpayer has filed a Protest as provided in this chapter.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 18.3 Refunds

A. Requests for Refunds. Any Taxpayer who claims to have overpaid a Tax imposed by this Code may file with the Tax Administrator a Request for Refund; *provided* that such Request for a Refund must be filed within one (1) year from the date of overpayment or be forever barred. The Request for a Refund must identify itself as a Request for Refund, declare the relief sought, and include a complete statement of the facts upon which the relief sought is based, together with

any information or documents necessary to support such facts. Contemporaneously with the filing of a Request for Refund, the Taxpayer also may request a Formal Conference with the Tax Administrator.

B. Final Decision by the Tax Administrator on a Request for a Refund. If the Tax Administrator finds that an overpayment has occurred, the Tax Administrator, in his or her discretion, shall credit the amount of the overpayment to any current or future Taxes due from the Taxpayer, refund the overpayment in full, or credit a portion of the overpayment to any current Taxes due from the Taxpayer and refund the remainder of the overpayment. The Tax Administrator must mail a copy of his or her decision, certified mail, return receipt requested, to the Taxpayer not later than twenty (20) days following the conclusion of the Formal Conference or, if no Formal Conference was requested, not later than thirty (30) days after the date the Request for a Refund was filed with the Tax Administrator. If no appeal to the Tax Commission is timely made as provided in this Code, the Tax Administrator's denial of a Request for a Refund shall be final and not subject to further appeal.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 18.4 Protests

A. Protest of Assessment. A Taxpayer who believes that an assessment is incorrect may protest by filing a Protest of Assessment with the Tax Administrator within thirty (30) days after the date of the Notice of Assessment. The Protest must be identified as a Protest of Assessment, declare the relief sought, state with particularity the basis of the Taxpayer's claim that the assessment is erroneous, and include a complete statement of the facts along with any information or documents necessary to support such facts and the Taxpayer's claim, including but not limited to any appraisals. Upon written request, filed with the Tax Administrator within the period allowed for filing a Protest, the Tax Administrator shall grant an extension of the time for filing a written Protest, of up to thirty (30) days.

B. Notice of Payment under Protest. A Taxpayer objecting to an assessment may avoid the imposition of additional interest, penalties, and any Administrative Costs only by paying the Tax due under protest within the prescribed time and by filing a Notice of Payment under Protest with the Tax Administrator at the time of payment.

C. Procedure Following Protest. Following receipt of a Protest, the Tax Administrator may request any additional information from the Taxpayer material to the issues raised by the Protest, and shall provide to the Taxpayer, on request, with information relevant to the assessment. The Tax Administrator and the Taxpayer may meet and confer regarding the Protest or do such other things as may be appropriate to reaching a resolution of the Protest.

D. Final Decision by the Tax Administrator on a Protest of Assessment. The Tax Administrator shall act on a Protest within thirty (30) days following receipt of the Protest or following receipt of any additional information requested from the Taxpayer, whichever is later. If the Tax Administrator determines that a protested assessment is incorrect, in whole or in part, he or she shall issue a written order correcting the assessment and crediting and/or refunding to the Taxpayer any overpayment. Otherwise, the Tax Administrator shall deny all relief The Tax

Administrator will mail a copy of the decision, certified mail, return receipt requested, to the Taxpayer. If no appeal to the Tax Commission is timely made as provided in this Code, the Tax Administrator's denial of a Protest of Assessment shall be final and not subject to further appeal.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 18.5 Appeal to the Tax Commission

A. Notice of Appeal. If a Taxpayer is dissatisfied with a decision of the Tax Administrator regarding a Request for a Refund or a Protest of Assessment, the Taxpayer may file a written Notice of Appeal with the Tax Commission, within thirty (30) days of the Taxpayer's receipt of the Tax Administrator's decision. Such notice shall be identified as a Notice of Appeal and state with particularity the basis of the Taxpayer's claim that an action of the Tax Administrator is erroneous, and shall be accompanied by a brief setting forth of the Taxpayer's arguments in support of the appeal and any other materials, information, or evidence relevant to his, her, or its claim. Upon receipt of the Taxpayer's appeal materials, the Tax Administrator shall have thirty (30) days within which to file with the Tax Commission a responsive brief and any materials, information, or evidence supporting the decision appealed.

B. Hearing and Notice. Following the time period for submission of materials, the Tax Commission shall schedule a hearing and give the Taxpayer and the Tax Administrator at least five (5) days' prior written notice of the hearing.

C. Hearing Procedures.

1. At the hearing, the Taxpayer will be afforded the opportunity to present testimony and evidence and to examine witnesses. A Taxpayer may appear *pro se* at a hearing or be represented by an attorney, certified or registered public accountant, or other spokesperson.

2. The Tax Administrator shall have the same rights to participate in the hearing as the Taxpayer.

3. Hearings shall not be open to the public except upon the request of the Taxpayer and may be postponed or continued at the discretion of the Tax Commission.

4. In hearings, all testimony shall be given under oath. The Tax Commission shall conduct the proceedings so that both complaints and defenses are amply and fairly presented. The Tax Commission may permit discovery, entertain and dispose of motions, and require written expositions of the case as the circumstances justify. Formal rules of evidence shall not apply; the Tax Commission may accept such evidence as it finds relevant and credible. The Tax Commission may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

5. The hearing shall be on the record, and a permanent record of the hearing shall be made by tape recorder and/or stenographic means. The Tax Commission shall, at the Taxpayer's request and sole expense, make and preserve a complete written record of the proceedings.

6. Without undue delay, the Tax Commission will render a written decision in accordance with the law and evidence presented and state the basis therefor. If the Tax Commission finds that there was substantial compliance with procedural requirements and that the decision of the Tax Administrator was supported by evidence and justified by applicable policies, rules, laws, and regulations, it shall affirm the Tax Administrator's decision. If it finds to the contrary, the Tax Commission may overturn the Tax Administrator's decision or any part thereof and/or remand the matter to the Tax Administrator with directions for further review. All decisions shall be signed by the Chair of the Tax Commission or other authorized Commissioner of the Tax Commission. A copy of the decision shall be mailed to the Taxpayer, certified mail, return receipt requested, and shall inform the Taxpayer of the right to appeal the decision to the Tribal Court, the terms of appeal, and the consequences of a failure to appeal. A copy of the decision also shall be filed with the Tax Administrator.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 18.6 Finality of Tax Commission Actions

If no appeal is timely made to the Tribal Court, decision by the Tax Commission will be final, binding, and enforceable, and will not be subject to any appeal to the Tax Commission or to any court or tribunal.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 18.7 Appeals from the Tax Commission's Decisions

A. Appeals to the Tribal Court Exhaustion of Administrative Procedures. The Tribal Court shall have exclusive jurisdiction to hear all appeals from final decisions of the Tax Commission and, except as otherwise provided for in this Code, the procedural rules of that court shall apply.

B. Filing a Notice of Appeal to the Tribal Court. Within twenty (20) days after the Taxpayer's receipt of a final decision of the Tax Commission, if the Taxpayer or the Tax Administrator is dissatisfied with the decision of the Tax Commission, either may file an appeal to the Tribal Court, by filing a Notice of Appeal with the court clerk stating the date of the decision and the specific issue or finding being appealed. A filing fee equal to the Court's fees for filing a civil action shall accompany the Notice. The party appealing the decision must serve a copy of the Notice of Appeal on the other party and the Tax Commission. Thereafter, the Tax Commission shall file a full record of its proceedings with the Tribal Court.

C. Review on the Record. The Tribal Court shall consider the appeal only to the same extent and upon the same theories and evidence as were asserted at the hearing before the Tax Commission. All such appeals shall be upon the administrative record presented to the Tax Commission, together with briefs and argument.

D. Standard of Review. The Tribal Court shall set aside a decision of the Tax Commission only if it finds the decision to be:

1. arbitrary, capricious, or an abuse of discretion;

2. not supported by substantial evidence in the record; or
3. otherwise not in accordance with applicable law.

E. Decisions of the Tribal Court. The Tribal Court shall issue a written decision on all appeals, which decision shall be final, binding, and enforceable, and will not be subject to any further appeal to any court or forum.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 18.8 Compromise and Settlement

The Tax Administrator may compromise and settle any disputed claim for payment of taxes by entering into a written settlement agreement with the Taxpayer in a manner that adequately protects the interests of the Pueblo; *provided* that any such agreement is subject to prior approval: (a) by the General Counsel for the Pueblo for a claim not greater than five thousand dollars (\$5,000), or (b) by the Tribal Council for a claim greater than five thousand dollars (\$5,000). If an agreement is entered into pursuant to this Section after any court acquires jurisdiction of the matter, the agreement shall become part of the stipulated order or judgment of the court. As a condition for entering into an agreement, the Tax Administrator may require the provision of security for the Taxes that shall be payable under the agreement. A settlement agreement is conclusive as to the liability for the payment of the Taxes to which it refers and the period to which it relates, except upon a showing of fraud, malfeasance, misrepresentation, or concealment of a material fact.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 18.9 Prohibition of Suits

No suits for the purpose of restraining the Tax Administrator or the Tax Commission from assessing or collecting Taxes imposed by this Code shall be maintained in any court by any person.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

CHAPTER 19 - COLLECTION POWERS

Sec. 19.1 Tax a Personal Debt

If not paid when due, the Tax imposed by this Code shall become a debt of the Taxpayer.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 19.2 Collection Powers Generally

Within five (5) years of the date a Tax or fee authorized under this Code becomes delinquent, the Tax Administrator may take any steps authorized under law to collect such Tax or fee, including but not limited to levying against or attaching and seizing assets of a Taxpayer or any property subject to a Lien. Where the Taxpayer has assets outside of the Pueblo's jurisdiction,

the Tax Administrator may file a civil action for collection in any court having jurisdiction and enforce the judgment of the court in any manner allowed by law.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 19.3 Tax Liens; Enforcement

A. Liens. Generally. The Tax assessed against any Person under this Code shall be a lien upon any and all property, real and personal, owned by such Person within the exterior boundaries of the Reservation. A Tax lien shall have precedence over any other claims, Liens, or demands, and may be enforced in the name of the Pueblo and can be satisfied by property belonging to Taxpayer.

B. Lien Date. If a Taxpayer fails to pay any Tax when due, a lien shall arise, without demand, in the unpaid amount in favor of the Pueblo as of the Assessment Date. Such lien shall be upon and attach to all property or rights in property then owned or thereafter acquired by the Taxpayer. The lien shall continue until satisfied or released.

C. Recording Notice of Lien. In order to preserve the lien against subsequent mortgages, purchasers, or judgment creditors, the Tax Administrator may file with the Tribal Court, with the Superintendent of the Northern Pueblos Agency, Bureau of Indian Affairs, the Pueblo's Realty Office, and with any other court or governmental entity charged with the duty of maintaining lien records, a Notice of Lien in such form as may be required. The Tax Administrator shall also send the Taxpayer a copy of the Notice of Lien so filed. The Tax Administrator shall keep a register of such Liens, including but not limited to the name of each Taxpayer, date and time the notice of lien was received by Taxpayer, amount, and when satisfied.

D. Judicial Foreclosure and/or Execution. After a Notice of Lien has been filed, the Tax Administrator may apply to the appropriate court or courts, to foreclose and/or execute upon any or all items of property or rights to property subject to the lien by Levying upon the same, or where such property does not consist of money, converting the same into money by any means authorized under applicable law including the Sale thereof or the operation under receivership of the Business in which the property is used.

E. Non-Judicial Levy and Sale. In his or her discretion, the Tax Administrator may proceed to collect Taxes due from a delinquent Taxpayer by Levy upon all property or rights to property of such Taxpayer, and the conversion thereof to money by the means provided in this Subsection.

1. A Levy shall be made by taking possession of property pursuant to authority contained in a distress warrant served by any authorized law enforcement officer upon the Taxpayer or other Person in possession of property or rights to property of the Taxpayer or upon any Person or depository owing or who will owe money to or holding funds of the Taxpayer, ordering him or her to reveal the extent thereof and surrender it to the Tax Administrator forthwith or agree to surrender it or the proceeds therefrom in the future, but in any case on the terms and conditions stated in the warrant. A distress warrant shall:

(a) bear on its face a statement of the authority for its service and compelling compliance with its terms;

(b) be attested to by the Tax Administrator;

(c) identify the Taxpayer whose liability for Taxes is sought to be enforced, the amount thereof, and the date or approximate date on which the Tax became due;

(d) order the Person on whom it is served to reveal the amount of property or rights to property in his or her own possession that belong to the Taxpayer and the extent of his or her own interest therein, and to reveal the amount and kind of property or rights to property of the Taxpayer that are, to the best of his or her knowledge, in the possession of others;

(e) order the Person on whom it is served to surrender the property forthwith, but may allow him or her to agree in writing to surrender the property or the proceeds therefrom on a certain date in the future when the Taxpayer's right to it would otherwise mature;

(f) state on its face the penalties for willful failure by any Person upon whom it is served to comply with its terms; and

(g) state that the Pueblo claims a lien for the entire amount of Tax asserted to be due.

2. Any Person in possession of property or rights to property upon which a Levy has been made shall, upon demand of the Tax Administrator, surrender the property or rights in property to the Tax Administrator except as to any property or rights in property that, at the time of the demand, is already subject to a *bonafide* attachment, execution, Levy, or other similar process.

3. As soon as practicable after the Levy, the Tax Administrator shall notify the Owner thereof of the amount and kind of property seized and of the total amount demanded in payment of Tax. The Tax Administrator shall decide on a time and place for the Sale of the property, shall make a diligent inquiry as to the identity and whereabouts of the Owners of the property and persons having an interest therein, and shall notify the Owner and persons having an interest therein of the time and place for the Sale. The fact that any Person entitled thereto does not receive the notice provided for in this Subsection shall not affect the validity of the Sale.

4. No Sale of imperishable property shall be held before the expiration of thirty (30) days from the date of the Levy thereon and until after the publication of a notice in a newspaper of general circulation in the county wherein the property was located when levied upon once each week for three (3) consecutive weeks stating the time and place of the Sale and describing the property to be sold. The Tax Administrator *may* sell perishable property immediately after seizure without publication or notice of the Sale.

5. At any time prior to the Sale, any Person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, or furnish acceptable security for the payment as provided in this Code. Upon payment or furnishing

of security, the Tax Administrator shall restore the property to that Person and cease further proceedings in connection with the Levy.

6. Before any Sale, the Tax Administrator shall determine a minimum, commercially reasonable price for which the property shall be sold, and if no Person offers such minimum price, the Sale shall be re-advertised and held at a later time. Sales shall be by public auction, and payment must be made in full at the time a bid is accepted. After the property is sold and payment received, the Tax Administrator shall deliver to the purchaser a certificate of Sale reciting the authority for the transaction, the date of the Sale, the interest in the property that is conveyed, and the price paid therefor. A certificate of Sale, when endorsed by the Tax Administrator, shall:

(a) be *prima facie* evidence of the right of the Tax Administrator to make the Sale and conclusive evidence of the regularity of the proceedings in making the Sale;

(b) transfer to the purchaser all right, title, and interest of the delinquent Taxpayer in and to the property sold, but subject to any outstanding prior interests and encumbrances;

(c) if such property consists of stock certificates, be notice, when received, to any corporation of such transfer and be authority to such corporation to record the transfer on its books and records as if the stock certificates were transferred or assigned by the record Owner; and

(d) if such property consists of a motor vehicle as represented by its title, be notice, when received, to any public official charged with the registration of title to motor vehicles of the transfer and be authority to that official to record the transfer on that official's books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the record Owner.

F. Application of Proceeds. The proceeds of foreclosure, execution, or non-judicial Levy shall be applied, or if none, first to expenses of foreclosure, execution, or Levy; second to other Administrative Costs; third to penalties; fourth to interest; and finally to Tax; *provided* that any remainder thereafter shall be remitted to the Owner(s) of the property foreclosed, executed, levied upon.

G. Release of Lien. Payment of the entire liability of the Owner on account of whose liability the lien arose shall operate to release the Lien. The payment of any part of the liability shall operate to reduce the amount of the lien by that amount paid. If a Notice of Lien has been filed or recorded, the Tax Administrator immediately shall cause a notation of the complete or partial release of the lien to be made in such record. The Tax Administrator, in his or her discretion, also may release Liens without full payment for good cause shown and where the interests of the Pueblo are protected by other security.

Sec. 19.4 Security for Payment

Whenever necessary to secure the payment of Taxes due and unpaid or reasonably expected to become due, the Tax Administrator *may* require the Taxpayer to furnish an acceptable Surety Bond in an appropriate amount, payable to the Pueblo and conditioned upon the payment of amounts therein identified, or to furnish other acceptable security in an appropriate amount.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

CHAPTER 20 - UTILITY POSSESSORY INTEREST TAX

Sec. 20.1 Ad Valorem Tax on Possessory Interests

There is hereby imposed and levied an *ad valorem* tax upon each Possessory Interest owned by any public utility, pipeline or other common carrier, and provider of telecommunications services, situated on Pueblo Lands. Such tax shall be referred to as "the Utility Possessory Interest Tax."

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 20.2 Incidence of Tax

The incidence of the Utility Possessory Interest Tax shall be on the owner of the Possessory Interest being taxed.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 20.3 Reporting Requirement

Each owner of a Possessory Interest subject to the Utility Possessory Interest Tax shall file an annual report with the Tax Administrator on or before February 1 of each year. On written request, and for good cause, the Tax Administrator may extend the due date of the report by up to thirty (30) days. The Tax Administrator will provide forms for the use of the Taxpayer in complying with the reporting requirement. This report shall contain the following:

- A. A description of the Possessors' Interest owned by the Taxpayer, including all property and improvements situated thereon, and the location thereof:
- B. A description of *any* improvements and additions thereto installed or made during the past calendar year;
- C. A description of any related equipment kept on Pueblo Lands during the past calendar year; and
- D. An itemized statement of the total values of the Possessor)' Interest and all related equipment as set forth in clauses A, B, and C above, as of January 1 of the year in which the report is submitted.

A Taxpayer who is required to file an annual report under the provisions of this section

and who fails to file such report by ten (10) days after the due date shall, in addition to any other liability such Taxpayer may have, be assessed a penalty of one percent (1%) of the amount of Utility Possessory Interest Tax owed by that Taxpayer for that year, for each month or partial month from the due date of the report until the date the report is received, up to a maximum of five hundred dollars (\$500).

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 20.4 Valuation of Possessory Interests

The value of a Possessory Interest for purposes of this Code shall be determined in the same manner as such values are determined under the provisions of the New Mexico Property Tax Code, unless the Commission by regulation shall specify some different manner.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 20.5 Rate of Tax

The tax rate shall be five percent (5%) of the total value of the Possessory Interests owned by the Taxpayer.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 20.6 Assessment and Payment

A. Upon receipt of the Taxpayer's annual report of its Possessory Interests on Pueblo Lands and the value thereof, the Tax Administrator shall send a tax bill to the Taxpayer, assessing Utility Possessory interest Tax based on the values shown in the annual report, together with any applicable penalties or interest. The amount of the tax shall be due in full by no later than April 1, or thirty (30) days after the tax bill is mailed, whichever is later.

B. In the event a Taxpayer fails to file its annual report, the Tax Administrator shall issue a tax bill to the Taxpayer based on the Tax Administrator's determination as to the value of Possessor)' Interests owned by the Taxpayer that are subject to the Utility Possessor)' Interest Tax, together with any applicable penalties and interest.

C. The Administrator shall have authority to redetermine incorrect or erroneous assessments, payments, or valuations.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 20.7 Exemptions

No Possessory Interest that consists of a utility delivery or distribution facility or line that serves exclusively Pueblo facilities or tribal members shall be subject to the Utility Possessory Interest Tax.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

CHAPTER 21 - GROSS RECEIPTS TAX

Sec. 21.1 Imposition and Rate of Tax

A. For the privilege of engaging in business, a tax is hereby imposed on the Gross Receipts of any person engaging in business on Pueblo Lands. Such tax shall be referred to as “the Gross Receipts Tax”.

B. So long as the Pueblo is party to a Tax-Sharing Agreement that is in effect, the Gross Receipts Tax shall be a percentage of the Taxpayer’s total Gross Receipts, which shall be equal to the Gross Receipts tax rate applicable to such Taxpayer under New Mexico law, or that would be applicable if the Taxpayer were subject to New Mexico Gross Receipts tax, including any local option portion. The Commission shall adjust the Gross Receipts Tax rate from time to time so as to maintain parity of the tribal tax rate with the applicable rate imposed by New Mexico and its political subdivisions as to each Taxpayer subject to the Gross Receipts Tax. As of the date on which the Pueblo ceases to be party to a valid Tax-Sharing Agreement, the Gross Receipts Tax rate(s) shall be at the rate(s) set by the Tax Commission.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec’y, July 1, 2003; amended by Res. No. 21-19, March 26, 2021; approved by Sec’y, May 17, 2021.

Sec. 21.2 Payment Due Date; Report

A. Gross Receipts Tax is to be paid on or before the twenty-fifth day of the month following the end of the calendar month in which the Gross Receipts are received. Each monthly payment must be accompanied by a report, on a form provided by the Tax Administrator, showing the Taxpayer’s total Gross Receipts for the month, and any amounts claimed to be exempt from taxation. All non-exempt entities must file such report timely, without regard to liability for a tax.

B. So long as the Pueblo is party to a Tax-Sharing Agreement that is in effect, a Taxpayer who is also subject to New Mexico Gross Receipts tax and who timely pays New Mexico Gross Receipts tax due with respect to Gross Receipts received on Pueblo Lands, in accordance with the provisions of the Tax-Sharing Agreement, shall be deemed to have complied with the requirements of this Code with respect to payment of Gross Receipts Tax.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec’y, July 1, 2003.

Sec. 21.3 Exemptions

The following receipts are exempted from the Gross Receipts Tax:

- A. Gross Receipts of the Pueblo;
- B. Gross Receipts of the United States of America;
- C. Gross Receipts of the State of New Mexico and its political subdivisions;

D. Gross Receipts from sales of gasoline, special fuel, and ethanol blended fuel;

E. Gross Receipts from the isolated or occasional sale or leasing of property or services by a person not regularly engaged in selling or leasing such on Pueblo Lands, provided that this provision shall not be construed as exempting from Gross Receipts Tax the receipts of a contractor, subcontractor or other type of construction firm for construction projects on Pueblo Lands;

F. Gross Receipts of a minister or of a charitable or religious organization, which organization has been granted an exemption from federal income tax; and

G. Gross Receipts from the sales of arts or crafts made by a Tribal Member and sold by the Tribal Member or by a family member or employee of the Tribal Member.

H. Gross Receipts of gaming activity received by an entity licensed by the Pueblo to conduct gaming on Pueblo Lands.

I. Gross Receipts of any entity wholly owned by the Pueblo, if the Tribal Council specifies in the organizing documents for such entity that its receipts, or any portion thereof, are intended to be exempt from the Gross Receipts Tax imposed by this Chapter.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003; amended by Res. No. 08-04, Feb. 19, 2008; amended by Res. No. 21-19, March 26, 2021; approved by Sec'y, May 17, 2021.

Sec. 21.4 Tax Credits

So long as the Commission or the Pueblo is party to a Tax-Sharing Agreement, every Taxpayer who is subject to the New Mexico Gross Receipts tax laws shall be entitled to a credit against the Gross Receipts Tax imposed by this chapter, in the amount set forth in the Tax-Sharing Agreement, which credit shall be administered as provided in the Tax Sharing Agreement, but any such tax credit shall expire as of the date on which no Tax-Sharing Agreement is in effect.

Enacted by Res. No. 03-15, June 3, 2003; approved by Sec'y, July 1, 2003.

Sec. 21.5 Bonds

Prior to commencing construction, every Person that is a construction contractor engaged in Business on Pueblo Lands shall post a bond or other form of surety acceptable to the Tax Administrator for the benefit of Santa Clara Pueblo in an amount sufficient to cover the Gross Receipts Tax due under the contract.

Enacted by Res. No. 21-19, March 26, 2021; approved by Sec'y, May 17, 2021.

CHAPTER 22 - GASOLINE EXCISE TAX

Sec. 22.1 Title

This chapter shall be cited as the Santa Clara Gasoline Excise Tax Code.

Enacted by Res. No. 06-03, February, 22, 2006; approved by Sec'y March 13, 2006.

Sec. 22.2 Definitions

For purposes of this Gasoline Excise Tax Code, the following terms shall have the following meanings:

A. "Gasoline" shall mean any flammable liquid hydrocarbon used primarily as fuel for propulsion of motor vehicles, motor boats or aircraft, except for diesel engine fuel, kerosene, liquified petroleum gas, compressed or liquified natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet-type engines.

B. "Retail," when used in connection with the sale of gasoline, shall mean such sale generally in quantities of 50 gallons or less, involving delivery of gasoline into the fuel supply tank of a motor vehicle, and does not include any sale of such gasoline for resale.

Enacted by Res. No. 06-03, February 22, 2006; approved by Sec'y March 13, 2006.

Sec. 22.3 Imposition of Tax; Rate

An excise tax is hereby imposed on gasoline that is sold at retail within Pueblo Lands (except that unless expressly determined by Tribal Council resolution, this tax shall not apply to the retail sale of gasoline at any location that is not on land owned by or held in trust for the benefit of the Pueblo or one of its members), at the rate of 17 cents per gallon of gasoline sold at retail, which tax shall be paid by the retail seller.

Enacted by Res. No. 06-03, February 22, 2006; approved by Sec'y March 13, 2006.

Sec. 22.4 Payment of Tax; Report

The tax imposed by this chapter shall be paid monthly by each retail seller subject thereto, on or before the twenty-fifth day of the month following the month in which the gasoline was sold, in accordance with regulations and procedures established by the Tax Commission. In addition to any other requirements reasonably imposed by the Commission, each monthly payment shall be accompanied by a report, on a form prescribed by the Tax Administrator, showing the number of gallons of gasoline in the seller's inventory as of the beginning of the first day of the month, each of the seller's gasoline purchases during the month, showing the date, distributor from whom purchased, and quantity thereof, the number of gallons of gasoline sold by the seller during the month, and the number of gallons of gasoline in the seller's inventory at the end of the month.

Enacted by Res. No. 06-03, February 22, 2006; approved by Sec'y March 13, 2006.

Sec. 22.5 Administration of Tax

The Tax Administrator shall collect the Santa Clara gasoline excise tax, in accordance with the provisions of this Code and regulations issued by the Commission.

Enacted by Res. No. 06-03, February 22, 2006; approved by Sec'y March 13, 2006.

Sec. 22.6 Audits; Inspections

The Tax Administrator shall have the authority to make periodic investigations of the records and gasoline storage and dispensing equipment maintained by each retailer subject to the provisions of this chapter, so as to verify reports by the retailer, test the calibration of gasoline tanks and dispensing equipment, and otherwise collect information relevant to the amount of taxes due hereunder.

Enacted by Res. No. 06-03, February 22, 2006; approved by Sec'y March 13, 2006.

CHAPTER 22A - LODGER'S TAX

Sec. 22A.1 Title

This chapter shall be cited as the Santa Clara Pueblo Lodger's Tax Code.

Enacted by Res. No. 2010-03, Mar. 17, 2010; approved by Sec'y May 27, 2010.

Sec. 22A.2 Definitions

For purposes of this Lodger's Tax Code, the following terms shall have the following meanings:

A. "gross taxable rent" shall mean the total amount of rent paid for lodging, or in the case of comped lodging, the amount of rent that would have been paid if the comped item had been purchased by the vendee. Gross taxable rent shall not include the Gross Receipts Tax collected.

B. "lodging" shall mean the transaction of furnishing a room or other accommodation by a vendor to a vendee who for rent uses, possesses or has the right to use or possess the room or other unit of accommodations in or at a taxable premises.

C. "lodgings" shall mean the room or other accommodation in or at a taxable premises.

D. "rent" shall mean the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to the Lodger's Tax imposed by this chapter.

E. "taxable premises" shall mean a hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, cabin or other premises used for lodging.

F. “vendee” shall mean a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

G. “vendor” shall mean a person furnishing lodgings in the exercise of the taxable service of lodging.

Enacted by Res. No. 2010-03, Mar. 17, 2010; approved by Sec’y May 27, 2010; amended by Res. No. 21-19, March 26, 2021; approved by Sec’y, May 17, 2021.

Sec. 22A.3 Imposition of Tax; Rate

A. For the privilege of furnishing lodgings, a tax is hereby imposed on the gross taxable rent received by each vendor within Pueblo Lands (except that unless expressly determined by Tribal Council resolution, and as consistent with applicable law, this tax shall not apply to the furnishing of lodgings at any location that is not on land owned by or held in trust for the benefit of the Pueblo or one of its members). The tax shall be known as the Lodger’s Tax.

B. The rate of the Lodger’s Tax shall be five percent of the gross taxable rent.

Enacted by Res. No. 2010-03, Mar. 17, 2010; modified by Res. No. 2010-09, May 5, 2010; approved by Sec’y May 27, 2010.

Sec. 22A.4 Collection of Tax; Report

A. Every vendor providing lodgings shall collect the tax thereon on behalf of the Pueblo and shall act as a trustee therefor.

B. The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.

C. Each vendor shall be liable to the Pueblo for the tax provided herein on the rent paid for lodging at his or her respective place of business.

D. Failure of the vendor to collect the tax from vendees is not cause for the Pueblo to forgive the tax due and owed by the vendor.

E. Each vendor shall make a report by the twenty-fifth day of each month, on forms prescribed by the Tax Administrator, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the lodgers’ tax to the Tax Administrator and include sufficient information to enable the Tax Administrator to audit the reports.

F. Lodgers’ tax payments are due by the twenty-fifth day of each month for receipts of lodging in the preceding calendar month.

Enacted by Res. No. 2010-03, Mar. 17, 2010; modified by Res. No. 2010-09, May 5, 2010; approved by Sec’y May 27, 2010.

Sec. 22A.5 Exemptions

The Lodger’s Tax shall not apply to any portion of the gross taxable rent:

A. If a vendee:

1. Has been a permanent resident of the taxable premises for a period of at least thirty (30) consecutive days as evidenced by a lease or other long-term lodging documentation; or

2. Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty (30) consecutive days;

B. For lodging accommodations at religious, charitable, educational or philanthropic institutions, as determined by the Tax Administrator, including without limitation such accommodations at summer camps operated by such institutions, or to lodging accommodations owned and operated by the Pueblo;

C. Received by clinics, hospitals or other medical facilities;

D. Received by privately-owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill.

Enacted by Res. No. 2010-03, Mar. 17, 2010; modified by Res. No. 2010-09, May 5, 2010; approved by Sec'y May 27, 2010.

Sec. 22A.6 Administration of Tax

The Tax Administrator shall collect the Lodger's Tax in accordance with the provisions of this Code and regulations issued by the Commission.

Enacted by Res. No. 2010-03, Mar. 17, 2010; approved by Sec'y May 27, 2010.

Sec. 22A.7 Audits; Inspections

The Tax Administrator shall have the authority to make periodic investigations of the records maintained by each vendor subject to the provisions of this Chapter, so as to verify reports by the vendor and otherwise collect information relevant to the amount of taxes due hereunder.

Enacted by Res. No. 2010-03, Mar. 17, 2010; approved by Sec'y May 27, 2010.

CHAPTER 23 - CIGARETTE EXCISE TAX, LICENSE

Sec. 23.1 Title

This chapter shall be cited as the Santa Clara Pueblo Cigarette Tax Code.

Enacted by Res. No. 2010-07, April 7, 2010; approved by Sec'y, May 27, 2010.

Sec. 23.2 Definitions

For purposes of this Cigarette Tax Code, the following terms shall have the following meanings:

A. "Cigarette" shall mean:

1. any roll of tobacco or any substitute therefor wrapped in paper or in any substance not containing tobacco; or

2. any roll of tobacco that is wrapped in any substance containing tobacco, other than one hundred percent natural leaf tobacco, which because of its appearance, the type of tobacco used in the filler, its packaging and labeling, or its marketing and advertising, is likely to be offered to, or purchased by, consumers as a cigarette.

B. “License” means a revocable, non-transferable authorization from the Tax Administrator to sell Cigarettes on Pueblo Lands.

C. “Licensee” means a Santa Clara Entity to whom a License is issued.

D. “Santa Clara Entity” means a Person that would be entitled to be exempted from the New Mexico cigarette tax pursuant to NMSA (1978) § 7-12-4(A)(2), as amended, if such Person were licensed hereunder.

Enacted by Res. No. 2010-07, April 7, 2010; approved by Sec’y, May 27, 2010.

Sec. 23.3 Imposition and Rate of Cigarette Tax

A. For the privilege of selling Cigarettes on Pueblo Lands, there is hereby imposed and levied an excise tax for each Cigarette sold on Pueblo Lands at retail by a Santa Clara Entity, including Cigarettes sold by the Pueblo. The tax imposed by this section shall be referred to as “the Cigarette Tax.”

B. The rate(s) of the Cigarette Tax shall be set by the Tax Commission.

Enacted by Res. No. 2010-07, April 7, 2010; modified by Res. No. 2010-11, May 14, 2010; approved by Sec’y, May 27, 2010; amended by Res. No. 21-19, March 26, 2021; approved by Sec’y, May 17, 2021.

Sec. 23.4 Incidence of the Tax

The incidence of the Cigarette Tax shall be upon any Santa Clara Entity that sells Cigarettes on Pueblo Lands.

Enacted by Res. No. 2010-07, April 7, 2010; approved by Sec’y, May 27, 2010.

Sec. 23.5 Conditions of License to Sell Cigarettes on Pueblo Lands; Penalty for Selling Cigarettes without a License

A. Every Santa Clara Entity selling Cigarettes on Pueblo Lands, including the Pueblo, must hold a License to sell Cigarettes issued pursuant to this Chapter, for each separate location on Pueblo lands at which the Licensee sells Cigarettes.

B. A License to sell Cigarettes may only be issued to a Santa Clara Entity.

C. The Licensee must be lawfully entitled to engage in business within Pueblo Lands, and must have paid all required rentals, assessments, taxes, or other payments due the Pueblo.

D. A License may not be assigned, sold, or otherwise transferred.

E. A License confers a non-transferable privilege, revocable by the Pueblo in accordance with the provisions of this Chapter. No Licensee shall have any property interest in any License issued under the provisions of this Chapter.

F. Any Santa Clara Entity who knowingly sells Cigarettes on Pueblo Lands without a License is subject to a penalty in the amount of twice the applicable tax rate for all Cigarettes sold, in addition to any other penalties provided by this Chapter and this Title.

Enacted by Res. No. 2010-07, April 7, 2010; approved by Sec'y, May 27, 2010.

Sec. 23.6 Application

An applicant for a License shall apply in writing on a form provided by the Tax Administrator setting forth the following information:

A. The full name, address, and telephone number of the applicant, and, if applicable, each of its owners (including residential address and post office box number of each); if the applicant is a corporation, partnership or other separate entity, the application shall also identify the jurisdiction within which the entity is organized; and the application shall state whether the applicant, or the applicant's owners, is a Tribal Member, the Pueblo, or an entity wholly owned by the Pueblo;

B. Each location where Cigarettes are to be sold by the applicant and satisfactory evidence as to the applicant's right to use the land on which Cigarette sales are to be conducted for such purpose; and

C. The federal tax identification number or social security number applicable to the applicant.

Enacted by Res. No. 2010-07, April 7, 2010; approved by Sec'y, May 27, 2010.

Sec. 23.7 Application and Renewal Fees

A. All Santa Clara Entities subject to licensing under this Chapter shall pay a fee for a License or the renewal thereof, in the amount of \$25.00 per year. A renewal application submitted after the expiration of the License shall be accompanied by a late fee in the amount of \$25.00.

B. Any smoke shop owned and operated by the Pueblo is exempt from the application fees, renewal fees, and late fees provided for in this section.

Enacted by Res. No. 2010-07, April 7, 2010; approved by Sec'y, May 27, 2010.

Sec. 23.8 Term; Renewal

A. The term of each License is one year from the date of issuance.

B. Application for renewal of a License may be made at any time prior to the expiration of the License, on a form to be supplied by the Tax Administrator and shall be accompanied by all required fees.

Enacted by Res. No. 2010-07, April 7, 2010; approved by Sec'y, May 27, 2010.

Sec. 23.9 Suspension; Revocation

A. The Tax Administrator may revoke or suspend a License issued pursuant to this Chapter, or shall refuse to issue a new or renewed License, for good cause as follows:

1. for any material misstatement of fact in an application for a License or a renewal of a License;
2. for any material misstatement of fact in a record, report, or other document required to be kept and/or filed with the Tax Administrator by this Chapter, Title, or other provision of the Santa Clara Pueblo Tribal Code.
3. for any violation of a License condition;
4. for any violation of this Chapter or any regulation promulgated hereunder, or any valid order of the Tax Administrator; or
5. for failure to pay any applicable tax in the amount and at the time due.

B. The Tax Administrator shall provide written notice of intent to revoke or suspend a License by certified mail, return receipt requested, to the last known address of the Licensee on the Tax Administrator's records. If the Licensee cannot be so served with notice, the Licensee may be served by publication in a newspaper of general circulation on Pueblo Lands once each week for two (2) consecutive weeks. The Licensee shall have ten (10) days from the day the notice was delivered, or from the date of last publication, to show cause in writing why the License should not be revoked or suspended.

C. In the event of an emergency, the Tax Administrator may temporarily revoke or suspend a License without prior notice for a period not exceeding thirty (30) days.

D. A Licensee may appeal a License revocation or suspension, or a refusal by the Tax Administrator to issue a License, by filing a civil action for review of the decision of the Tax Administrator in Santa Clara Tribal Court. Such action shall be filed in the same manner as any civil action in the Tribal Court and shall name the Tax Administrator as the defendant. The sovereign immunity of the Pueblo shall not be a defense to any such action. The Tribal Court shall decide the case based on the written record before the Tax Administrator. The Court shall uphold the challenged action of the Tax Administrator unless it finds that the Tax Administrator acted arbitrarily or capriciously, or abused his discretion, or acted contrary to Pueblo law. The

Court may not in any event award any damages against the Pueblo or the Tax Administrator.

Enacted by Res. No. 2010-07, April 7, 2010; approved by Sec'y, May 27, 2010.

Sec. 23.10 Payment of Tax; Report; Exemptions

A. The Cigarette Tax is to be paid on or before the twenty-fifth day of the month following the calendar month in which the Cigarettes are sold. Each monthly payment shall be accompanied by a report, on a form provided by the Tax Administrator, showing the Licensee's total Cigarette sales for the month. All reports must timely filed without regard to liability for a tax.

B. The report shall contain the following:

1. The total number Cigarettes, by brand and package quantity, on hand on the first day of the reporting period;

2. The total number of Cigarettes, by brand and package quantity, received during the reporting period, and the name and address of the Person from whom the Cigarettes were received;

3. The total number of Cigarettes, by brand and package quantity, sold during the reporting period.

4. The total number of Cigarettes, by brand and package quantity, lost due to shrinkage, returns, or other such reductions to inventory, provided that Licensee shall also provide proof to the Tax Administrator's satisfaction to support its claim of any such loss, shrinkage or returns.

5. The total number of Cigarettes, by brand and package quantity, on hand on the last day of the reporting period.

Enacted by Res. No. 2010-07, April 7, 2010; approved by Sec'y, May 27, 2010.

Sec. 23.11 Effective Date

The effective date of this Chapter is July 1, 2010, subject to the approval of the Secretary of the Interior.

Enacted by Res. No. 2010-07, April 7, 2010; approved by Sec'y, May 27, 2010.