

**POTAWATOMI LAW AND ORDER CODE**

**TITLE 10  
GENERAL REVENUE AND TAXATION**

**CHAPTER 10-1  
POTAWATOMI TAX COMMISSION  
DESIGNATED AS TAXING AUTHORITY**

**Section 10-1-1. Purpose.**

It is necessary and essential to the preservation of the Nation as a sovereign government to strengthen tribal government by licensing and regulating certain conduct within the tribal jurisdiction, and by providing financing for the maintenance and expansion of the Nation's tribal government operations and services in order for the Prairie Band Potawatomi Nation to efficiently and effectively exercise its confirmed governmental responsibilities within the Indian Country subject to its jurisdiction. The purpose of this Title is to provide simple, fair, straightforward and efficient procedures for the licensing and regulating of certain conduct, and the levy and collection of certain taxes.

**Section 10-1-2. Taxing Powers Vested in Tax Commission.**

The Potawatomi Tax Commission is hereby granted all powers, duties, rights and functions hereinafter defined with respect to the creation, implementation, administration and enforcement of tribal tax laws.

**Section 10-1-3. Seal.**

The Potawatomi Tax Commission is authorized, directed to acquire and use a seal which shall be circular in form with the words "Prairie Band Potawatomi Tax Commission" around the edge thereof, and the word "seal" in its center. The seal shall be impressed upon the originals or certified copies of all licenses, orders, rules, and other official documents of the Commission as evidence of their authenticity and authority.

**Section 10-1-4. General Taxing Powers of the Tax Commission.**

The Tax Commission shall generally be charged with the creation, implementation, administration and enforcement of all the tribal tax laws. The Tax Commission shall be administered and directed by the Tax Commissioner, who shall be appointed by and serve at the pleasure of the Tribal Council. Incidental to the administration or enforcement of the tribal tax laws, the Tax Commission shall have the power to:

(A) Assess, estimate, file liens, collect, and issue receipts for such taxes as are imposed by law and to bring actions on behalf of the Nation in the Tribal Court for the collection of tribal taxes, penalties and interest, and the enforcement of the tribal tax laws. All such actions shall be styled: Prairie Band Potawatomi Nation vs. \_\_\_\_\_;

(B) Administer oaths, conduct hearings, and, by subpoena to compel the attendance of witnesses and the production of any books, records, and papers of any taxpayer relating to the enforcement of the tribal tax laws;

(C) Make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer, upon reasonable notice, during normal business hours, at any other time agreed to by said taxpayer, or at any time pursuant to a search warrant signed by the Tribal Court;

(D) Examine, under oath, either orally or in writing any taxpayer or any agent, officer, or employee of any taxpayer, or any other witness in respect to any matter relative to the tribal tax laws;

(E) Exercise all other authority delegated or conferred upon it by law, or as may be reasonably necessary in the administration or enforcement of any tribal tax laws;

(F) Either before or after commencement of an action for the recovery of taxes, penalties, and interest due the Nation, but prior to final judgment thereon, compromise and settle such claims for an amount less than the total amount due, provided that such compromise and settlement shall be approved by the Tax Commission only when, in its judgment, such action is in the best interest of the Nation, and provided further, that no settlement shall be made unless the delinquent taxpayer pays the principal amount of taxes due to the Nation.

**Section 10-1-5. Rulemaking Authority.**

(A) The Tax Commission shall have the authority to prescribe, promulgate, and enforce written rules and regulations not inconsistent with this Title to provide for its internal operational procedures; or to interpret or apply any tribal tax laws as may be necessary to ascertain or compute the tax owing by any taxpayer, or for the filing of any reports or returns required by any tribal tax laws, or as shall be reasonably necessary for the efficient performance of its duties, or as may be required or permitted by law.

(B) No rule of regulation of the Tax Commission shall be of any force or effect until and unless a certified copy of said rule or regulation bearing the signatures of the Tax Commissioner and the official seal of the Tax Commission shall have been filed for record in the office of the Tribal Council Secretary.

(C) The Tribal Court shall take judicial notice of all rules of the Tax Commission promulgated pursuant to this Title.

**Section 10-1-6. Forms.**

The Tax Commission may prepare and make available to the public such standard forms as are or may be necessary to carry out its functions and which are not otherwise provided for by this Title.

**Section 10-1-7. Tax Stamps and Licenses.**

(A) The Tax Commission shall provide for the form, size, color, and identifying characteristics of all licenses, permits, tax stamps, tags, receipts, or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Tax Commission or otherwise showing compliance with the tax laws of the Prairie Band Potawatomi Nation.

(B) Such stamps or licenses shall contain at least the following information:

- (1) The words "Prairie Band Potawatomi Nation."
- (2) The monetary amount for which the tax or license was issued.
- (3) Wording which indicates the type of tax imposed.
- (4) If the instrument is a license, permit or receipt, wording indicating the type of license, permit, or receipt, its effective dates, and the name and address of the taxpayer to whom issued.

(C) The Tax Commission shall provide for the manufacture, delivery, storage, and safeguarding of such stamps, licenses, permits, tags, receipts, or other documents and shall safeguard such instruments against theft and counterfeiting.

(D) When the Tax Commission deems it necessary to do so, it may allow the use of metering devices in lieu of paper stamps under such rules and regulations as it shall prescribe.

(E) The Tax Commission may exchange new stamps for damaged, out of date, or other unusable stamps under such rules and regulations as the Tax Commission shall prescribe.

**Section 10-1-8. Bookkeeping.**

Financial records shall be established and maintained as may be necessary under generally applicable accounting standards to adequately account for all funds and monies received by the Tax Commission on behalf of the Nation. Separate books shall be maintained for each type of tax imposed by this Title.

**Section 10-1-9. Tax Commission Employees and Expenses.**

(A) The Tax Commission may employ such employees and incur such expenses as may be necessary for the proper discharge of its duties subject to the limitations and restrictions herein set out.

(B) The Tax Commission shall, to the maximum extent feasible, utilize regular tribal staff in exercising the duties and responsibilities in this Title, and may delegate to the tribal staff by rule such of its functions as may be necessary to efficiently administer this Title, provided, that the Commission's rule making authority may not be delegated.

(C) The Tribal Council is authorized and directed to cause such regular staff assistance as is feasible to be given to the Tax Commission.

(D) The total amount dispersed by the Tax Commission in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated therefor by the Tribal Council or the General Council. The Tax Commission shall submit, to the Tribal Council, a line item proposed budget for the next fiscal year at the same time as other departmental budgets are submitted.

**Section 10-1-10. Bonds.**

(A) The Tax Commission may require each of its employees who shall be required to handle public monies, revenues, or tax stamps, or who shall be responsible therefor, to give bonds for the honest and faithful performance of their duties, in such amounts as may be fixed by the Tax Commission.

(B) The premiums on any bonds required by this Section of the Tax Commissioner and Commission employees shall be paid from funds authorized in the Tax Commission budget.

**Section 10-1-11. Records.**

(A) The Tax Commission shall keep and maintain accurate, complete, and detailed records which reflect all taxes, penalties, and interest levied, due, and paid, all licenses issued, and each and every official transaction, communication, or action of the Commission.

(B) Such records shall be maintained at the tribal building and shall not be removed from said building absent the consent of the Tax Commission.

(C) Any record of the Tax Commission (except the record of an official decision or opinion rendered upon an administrative appeal), which relates to the individual business or personal activities of a named particular taxpayer or taxpayers shall not be open to public inspection and shall be released only to the taxpayer involved, tribal officials or employees who have a legitimate official need for such records, or upon order of the Tribal Court for good cause shown.

(D) Any record of the Tax Commission which does not relate to the individual business or personal activities of a named particular taxpayer or taxpayers, and all decisions or opinions rendered upon an administrative appeal, shall be public records of the Nation and shall be available for public inspection during regular business hours. Copies of such records may be obtained by payment of such copying costs as may be established by rule of the Tax Commission provided, that names and other identification of any taxpayer appearing in such record shall be rendered unreadable prior to issuance of such copy unless the provisions of Subsection 10-1-11(C) would allow release of such information.

**Section 10-1-12. Treasury Account—Deposits.**

(A) There is hereby authorized and directed to be established an account in some federally insured financial banking institution to be known as the Prairie Band Potawatomi Nation Treasury Account.

(B) The Treasury Account shall be an interest bearing account or fund and the funds therein may be invested and reinvested as may be approved by the tribal Treasurer.

(C) No monies shall be released or expended from this account or fund except upon approval by the Tribal Council appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Nation.

(D) All tax monies, license fees, penalties, interest, service fees or charges or other monies collected by the Tax Commission in the administration and enforcement of this Title, except as otherwise specifically authorized by law, shall be deposited in the Treasury Account.

**Section 10-1-13. Collection of Taxes.**

The Tax Commission is hereby authorized to bring any necessary action in any appropriate Court for the collection of any taxes, penalties or interest assessed and unpaid. Such action shall be civil in nature and all penalties and interest shall be in the form of civil damages for non-payment. Any civil remedies, including but not limited to garnishments,

attachments, and execution shall be available for the collection of any monies due the Nation. The Tax Commission may request the tribal attorney to bring any necessary action for the collection of any taxes, penalties, or interest assessed and unpaid.

**Section 10-1-14. Other Remedies.**

(A) In addition to the remedies available for the collection of monies, the Tax Commission is authorized to bring an action in any appropriate Court to enjoin the beginning or operation of any unlicensed business, activity, or function when tribal law requires a license be issued for such business, activity or function.

(B) In addition to the remedies available for the collection of monies, the Tax Commission is authorized, when accompanied by a police officer, to seize any property which is declared contraband by any section of this Title or upon which any tax levied is in excess of sixty (60) days past due under the same conditions, limitations and exceptions as evidence of crimes may be searched for and seized. Within ten days of such seizure, the Tax Commission shall cause to be filed an action against said property alleging the nonpayment of tax or other lawful reason for such seizure and forfeiture, and upon proof, the Court shall order such property forfeited for nonpayment of taxes and title thereto vested in the Prairie Band Potawatomi Nation. Any person claiming ownership, the right to possession or other interest in said property may intervene in said action and raise any defenses which he may have, and such persons shall be served with process if they are known prior to the beginning of the action, provided further, that such persons may redeem said property at any time prior to the entry of a final judgment of forfeiture by depositing all taxes, penalties, and interest assessed or owing with the Court.

**Section 10-1-15. Inventory of Seized Property.**

Whenever any authorized person shall seize any property pursuant to Section 10-1-14, he shall inventory and appraise such property and leave a copy thereof with the person from whom it was seized, or, if such person cannot be found, at the place from which said property was seized, and deliver a copy of said inventory to the Tax Commission.

**Section 10-1-16. Public Sale of Forfeited Property.**

(A) Upon a final order of forfeiture entered by the Tribal Court, the Tax Commission shall circulate an inventory of said property to all divisions of the tribal government. Any agency of the tribal government may submit a request to the Tribal Council that such portion of said property as they can use be retained for the benefit of the Nation. The Tribal Council shall determine which property will be retained and shall conduct a public sale of the remainder, or destroy any property which is illegal to possess in all circumstances.

(B) The property to be sold shall be sold at public auction at the administrative headquarters of the Prairie Band Potawatomi Nation or other appropriate location.

Not less than twenty (20) days notice of such sale shall be posted in the tribal administrative headquarters building and published at least twice in a newspaper of general circulation in the Mayetta, Kansas, or other appropriate area not less than ten (10) days prior to said sale. All funds received at said sale after payment of the cost of said sale shall be deposited in the Treasury Account.

(Amended by PBP TC No. 2008-121, May 22, 2008)

(C) The Tax Commission may conduct such sales at such times as it deems sufficient property has accumulated to make such sale profitable and shall conduct such sales upon direction of the Tax Commissioner.

(D) The seizure, forfeiture, and sale of contraband property shall not reduce or eliminate the tax liability of any person from whom such property was seized. The seizure, forfeiture, and sale of any other property shall reduce the tax liability of the person from whom such property was seized.

**Section 10-1-17. Exempt Property.**

The following property shall be exempt from garnishment, attachment, execution and sale for the payment of taxes, penalties, and interest due the Prairie Band Potawatomi Nation:

(A) Three-fourths (3/4) of the net wages earned per week by the person or an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater.

(B) One automobile of fair-market value, equity not exceeding ten thousand dollars (\$10,000.00).

(C) Tools, equipment, utensils, or books necessary to the conduct of the person's business but not including stock or inventory.

(D) Actual trust or restricted title to any land held in trust by the United States or subject to restrictions against alienation imposed by the United States but not including leasehold and other possessory interests in such property.

(E) Any dwelling used as the actual residence of the taxpayer including up to five (5) acres of land upon which such dwelling is located whether such dwelling is owned or leased by the taxpayer.

(F) Household goods, furniture, wearing apparel, personal effects but not including televisions, radios, phonographs, tape recorders, more than two (2) firearms, works of art, and other recreational or luxury items.

(G) All implements of husbandry used upon the homestead.

(H) All ceremonial or religious items.

**Section 10-1-18. Administrative Appeals.**

Any taxpayer against whom the Tax Commission has assessed taxes, penalties, or interest pursuant to a taxation law of the Nation, or who has paid under written protest, any taxes, penalties, or interest assessed by the Tax Commission may file a written request for hearing with the Tax Commission if the taxpayer believes those taxes, penalties, or interest to be wrongfully assessed or collected. Such request must be filed within 30 days of the date of mailing of the Commission's notice of assessment or, when applicable, within two years of the date of payment. The Tax Commissioner or a person designated by the Commissioner with Tribal Council approval shall preside over the hearing and shall issue an order for the Commission. A taxpayer may appeal a final Tax Commission order in writing for a hearing before the Tribal Court. Such appeals to Tribal Court shall be filed within 30 days of the date of mailing of the Tax Commission's final order.

**Section 10-1-19. Limitations on Administrative Appeals.**

Any appeal as provided for in Section 10-1-18 must be begun by filing a written request for a hearing with the Tax Commission.

**Section 10-1-20. Reserved.**

(Amended PBP TC No. 92-66, November 18, 1992; amended by PBP TC No. 2000-82, May 2, 2000)

**Section 10-1-21. Appeals; Suits Against the Tax Commission.**

**(A) Limitation of Appeals.** Notwithstanding any other provision of this Code, no appeal to the District Court by any taxpayer or other person shall be allowed regarding any tax levied or assessed or any other action taken by the Tax Commission pursuant to this Title 10, unless all such taxes, penalties, or interest shall have been paid to the Tax Commission in full.

**(B) Suits Against the Tax Commission.** The Tax Commission, as a governmental agency of the Nation and its members and employees, shall be immune from any suit in law or equity while performing its lawful duties within the scope of the authority delegated to it, provided, that any taxpayer or other person against whom the Tax Commission has assessed taxes, penalties, or interest or who has paid under written protest any taxes, penalties, or interests may bring an action in the Tribal Court after exhaustion of administrative remedies and subject to the provisions of Subsection 10-1-21(A) to enjoin the Tax Commission from collecting any taxes, penalties, or interest assessed, or for the recovery of any taxes, penalties, or interest paid under written protest which the Court finally determines to have been wrongfully assessed or collected.

(Amended by PBP TC No. 92-66, November 18, 1992; amended by PBP TC No. 2000-82, May 2, 2000)

**Section 10-1-22. Taxes Erroneously Paid to be Refunded.**

Taxes erroneously paid due to a mistake of fact or law may be refunded upon the filing of a written refund claim within two years of the date of payment even though no written protest was made at the time of payment. The taxpayer may file a claim for refund with the Tax Commission and, subject to the provisions of Subsection 10-1-21(A), may appeal the determination of the Commission to the Tribal Court.

**Section 10-1-23. Refunds to Taxpayers.**

(A) Whenever any taxpayer shall establish in administrative or Court proceedings that he is entitled to a refund of any taxes, penalties, or interest previously paid, the Tax Commission shall immediately cause a certified copy of the order and transcript of any administrative action, or judgment of the Court to be filed with the Tribal Council.

(B) When it appears reasonably certain that the taxpayer to whom a refund is due will incur further tax liability within the next twelve (12) months after such refund is due in an amount in excess of such refund, the Tax Commission or the Court, in lieu of Subsection 10-1-23(A), may credit the amount of such refund, with lawful interest, against the future liability of the taxpayer, provided, that any amounts not used within twelve (12) months shall be refunded at the request of the taxpayer. Whenever any taxpayer shall establish in administrative or Court proceedings that he is entitled to a refund of any taxes, penalties, or interest previously paid, the Tax Commission shall immediately cause a certified copy of the order and transcript of any administrative action, or judgment of the Court to be filed with the Tribal Council.

(Amended by PBP TC No. 92-66, November 18, 1992; amended by PBP TC No. 2000-82, May 2, 2000)

**Section 10-1-24. Forgery of Stamps, Etc.**

Any person who, without authorization of the Tax Commission, falsely, or fraudulently forges, embezzles, steals, knowingly converts, knowingly misapplies or permits to be misapplied or counterfeits and stamps, tags, licenses, or other instrument evidencing payment of taxes prescribed for use in this Title or who shall use, pass, tender as true, or otherwise be in possession of any unauthorized, false, altered, forged, counterfeited, or previously used instrument for the purpose of evading the payment of taxes imposed by this Title shall forfeit a civil penalty as provided by the General Penalties of this Title. Each such counterfeited, embezzled, stolen, converted, misapplied or forged stamp or other instrument shall constitute a separate violation.

**Section 10-1-25. Offenses.**

Any person who violates any provisions of this Title for the purpose of evading the payment of taxes imposed by this Title shall be guilty of a civil offense and may be punished by a fine not to exceed five hundred dollars (\$500.00). Any Indian so violating this title may

be punished by imprisonment for a term not to exceed six (6) months or a fine not to exceed five hundred dollars (\$500.00) or by both such fine and imprisonment.

**Section 10-1-26. Banishment.**

Any corporation, partnership, association, company, firm, joint venture, estate, or trust who violates any provision of this Title for the purpose of evading payment of taxes imposed by this Title, in addition to any civil penalties or the civil penalties of seizure and forfeiture imposed by this Title, may be excluded from carrying on any business within the jurisdiction of the Prairie Band Potawatomi Nation for a period not to exceed five (5) years, by order of the Tribal Court, provided, that such garnishment as may be imposed, may be suspended by the Judge of the Tribal Court conditioned upon strict compliance with all ordinances and laws of the Prairie Band Potawatomi Nation. An order of expulsion not suspended shall by operation of law cancel all permits, licenses, and other authority of the person to carry on any business within the tribal jurisdiction during its terms.

**Section 10-1-27. Cancellation of Leases upon Banishment.**

Whenever any person or business is banished and excluded from the jurisdiction of the Prairie Band Potawatomi Nation and the order of expulsion is not suspended, and such person or business holds a lease to realty within the jurisdiction of the Prairie Band Potawatomi Nation for other than residential purposes, said lease may be canceled by the lessor within sixty (60) days of the order of banishment at his option by sending written notice to lessee or his attorney by registered or certified mail, return receipt requested, at his last known address. A true and correct copy of the notice of lease cancellation shall be delivered by certified mail, return receipt requested, to the Tribal Council and the Tax Commission at the same time the notice is sent to the lessee. Such cancellation shall entitle lessor to full use and possession of the premises and render the lease absolutely void from that date forward and shall relieve lessor and lessee from all future obligations under such lease, provided, that such cancellation shall not relieve lessor or lessee from any obligation incurred prior to the date of cancellation.

**Section 10-1-28. Interest.**

The statutory rate of interest to be imposed for failure to remit any tax imposed by this Title shall be one and one half percent per month, compounded monthly.

**Section 10-1-29. Penalty.**

Whenever no specific penalty is provided regarding a specific tax imposed by this Title, the Commission shall determine a penalty to be paid by any person who shall fail to remit any such tax in an amount which shall not exceed 100% of the tax delinquency.

## CHAPTER 10-2 TOBACCO TAX

### Section 10-2-1. Definitions.

(A) **Cigarette.** “Cigarette” means all rolled tobacco or any substitute therefor, wrapped in paper or any substitute therefor, and weighing not to exceed three (3) pounds per thousand (1,000) cigarettes.

(B) **Consumer.** “Consumer” means any person who receives or comes into possession of cigarettes or tobacco products for the purpose of consuming or otherwise disposing of them in any way except by an exchange for value.

(C) **Person.** “Person” means any individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity or other identifiable entity to which this Title can be applied.

(D) **Retailer.** “Retailer” means any person who comes into possession of cigarettes or tobacco products for the purpose of selling or who sells them at retail, any person not coming within the definition of a wholesaler having possession of more than one thousand (1,000) cigarettes, and any person operating one to three vending machines.

(E) **Sales or Sales.** “Sale or sales” means all sales, barter, exchanges or other transfers of ownership of cigarettes or tobacco products from one person to another, or the use of consumption within the tribal jurisdiction in the first instance of cigarettes or tobacco products from outside the tribal jurisdiction upon which the tribal tax has not been paid.

(F) **Stamp.** The term “stamp” is defined to mean and include the stamp or stamps produced by the Tax Commission by which the tax levied hereunder is paid.

(G) **Tobacco Product.** “Tobacco product” means any smokeable product of any species of the tobacco plant, including smoking tobacco suitable for smoking in pipes or rolling into cigarettes, any roll of tobacco for smoking, irrespective of size or shape or adulteration which has a wrapper made chiefly of tobacco and includes, but is not limited to, those items commonly known as cigars, cheroots, or stogies, and any articles or products made from tobacco or any substitute therefor, except cigarettes, but not including chewing tobacco of any description, include snuff.

(H) **Use.** “Use” means the exercise of any right or power over cigarettes or tobacco products incident to the ownership thereof, except sales of cigarettes or tobacco products in the regular course of business.

(I) **Vending Machines.** “Vending machine” means any coin operated machine by means of which cigarettes, or tobacco products are sold or dispensed.

**(J) Wholesaler.** “Wholesaler” means any jobber or person 1) who is organized and existing or doing business primarily to sell cigarettes or tobacco products and render services to retailers, 2) who renders such services to retailers within the jurisdiction of the Prairie Band Potawatomi Nation and 3) for whom at least seventy-five (75%) per cent of the whole gross sales within the jurisdiction of the Nation are made at wholesale. Irrespective of the foregoing requirements, any jobber of a person who is recognized and licensed as a wholesaler in the jurisdiction wherein, said jobber or person resides, is incorporated, or has its principle place of business shall be a wholesaler as defined by this Title, and any operator of four or more cigarette vending machines shall be a wholesaler as defined by this Title.

**(K) Within the Tribal Jurisdiction.** “Within the tribal jurisdiction” means the geographical areas within the territorial jurisdiction for the Prairie Band Potawatomi Nation.

**Section 10-2-2. Tax on Cigarettes.**

There is hereby levied upon the sale, use, gift, possession or consumption of cigarettes within the tribal jurisdiction a tax of seventeen (\$.17) cents for each package of cigarettes containing twenty (20) cigarettes or less. On any individual package containing more than twenty (20) cigarettes there is hereby levied a tax of seventeen (\$.17) cents plus an additional seventeen (\$.17) cents pro rated for each additional cigarette.

**Section 10-2-3. Tax on Tobacco Products.**

There is hereby levied upon the sale, use, gift, possession, or consumption of tobacco products within the tribal jurisdiction a tax of twenty (20%) per cent of the factory list price exclusive of any trade discount, special discount, or deals.

**Section 10-2-4. Tax Paid Once.**

Such taxes pursuant to Section 10-2-2 and 10-2-3, shall be paid only once on any cigarettes sold, used, received, or possessed within the tribal jurisdiction.

**Section 10-2-5. Evidence of Tax.**

At the discretion of the Tax Commissioner, payment of tobacco tax shall be evidenced by stamps applied to each taxable package or carton containing tobacco. Such stamps may be furnished by and purchased from the Tax Commission or by an impression of such stamp by use of a metering device approved by the Tax Commission.

**Section 10-2-6. Impact of Tax.**

The impact of the taxes imposed by this Chapter is declared to be on the consumer, user, or possessor and when such tax is paid by any other person that payment shall be

considered an advance payment and shall be added to the price to be recovered from the ultimate user, possessor, or consumer. Every wholesaler who has paid such taxes shall, and every retailer who has paid such taxes may show the amount of such taxes as a separate item on any invoices which they may issue.

**Section 10-2-7. Payment of Tax.**

(A) Every wholesaler who operates within the tribal jurisdiction, a warehouse, supply house, storage house, truck or other point from which distribution of cigarettes, or tobacco products to retailers or vending machines are made shall, upon withdrawal from storage, and prior to placing in a vending machine or making any sale, distribution, or transfer of possession or ownership of any such cigarettes or tobacco products, cause the same to be affixed with such stamp or stamps as are required by this Title.

(B) Every retailer who comes into possession or ownership of any cigarettes, or tobacco products from any source which does not have affixed thereto, the proper stamps, shall within seventy-two (72) hours of receipt thereof, excluding Sundays and legal holidays and prior to making any sale or distribution for consumption, cause the same to have affixed thereto, such stamp or stamps as are required by this Title.

(C) Every consumer who shall come into possession or ownership of cigarettes or tobacco products from any source which does not have affixed thereto, the proper stamp or stamps shall within seventy-two (72) hours and prior to the consumption, gift, or other use thereof, cause the same to have affixed thereto, such stamp or stamps as are required by this Title.

**Section 10-2-8. Exclusions from Taxation.**

Notwithstanding the provisions of Subsection 10-2-7(C) or any other provision of law, possession, gift, or use of noncommercial privately produced tobacco for religious or ceremonial use shall be exempt from taxation, provided, that if such tobacco is sold, such sale shall be prima facie evidence that the tobacco is not intended for religious or ceremonial use.

**Section 10-2-9. Unstamped Tobacco Contraband.**

Any unstamped cigarettes or tobacco products found in the custody or control of any person upon which a tax stamp is required to have been placed by this Title and any vehicles or tangible personal property including vending machines used in their transportation, storage, consumption, or concealment are hereby declared to be contraband and subject to seizure, forfeiture and sale.

**Section 10-2-10. Records.**

The Tax Commission shall promulgate rules requiring that all wholesalers and retailers of tobacco within the tribal jurisdiction shall maintain for not less than three years complete and adequate records, including invoices, of all tobacco received and sold or otherwise disposed of, and tax stamps purchased. The Tax Commission may inspect said records at any time to determine whether sufficient stamps have been purchased to account for all tobacco received and sold or otherwise disposed of by said wholesaler or retailer.

**Section 10-2-11. Reports.**

Every wholesaler or retailer of tobacco shall submit quarterly reports to the Tax Commission on forms prescribed and furnished by the Tax Commission disclosing the opening and closing inventories of unstamped tobacco; stamped tobacco; tobacco stamps; purchases of tobacco including the invoice number, name and address of seller, date and amount of each type of tobacco purchased and such other information pertinent to their business done within the tribal jurisdiction as the Tax Commission shall require; and sales of tobacco; including, if sold for resale, invoice number, name and address of buyer, date and amount of each type of tobacco sold and such other information pertinent to their business done within the tribal jurisdiction as the Tax Commission shall require. A distributor or transporter of tobacco products, upon request of the Tax Commission, shall provide a detailed report of all tobacco product deliveries made within the tribal jurisdiction. In the event of the failure or refusal to provide such a report, the distributor or transporter shall be liable for a \$100 civil penalty for each day for which there is a refusal or failure.

**Section 10-2-12. Wholesale and Retail Stock to be Separate.**

Every person who is both a wholesaler and retailer of tobacco shall keep separate records, make separate reports, and keep all stock of tobacco separated and identifiable for the wholesale and retail portions of his business.

**Section 10-2-13. Wholesaler Licensing.**

Every wholesaler of tobacco must apply for and receive from the Tax Commission a "Tobacco Wholesaler License" prior to establishing any place of business, warehouse, or wholesale outlet for the sale of tobacco within the tribal jurisdiction. Forms for such application and license shall be provided by the Tax Commission.

**Section 10-2-14. Tobacco Wholesaler License.**

The Tobacco Wholesaler License shall be valid for one calendar year from the date of issue and shall be nontransferable and nonassignable. A separate license shall be required for each separate location at which a wholesaler may establish a place of business, warehouse, or wholesale outlet. The license shall be conspicuously posted in a public area in each such place of business, warehouse, or wholesale outlet. A license fee of twenty dollars (\$20.00) shall be paid for each new or renewal license issued.

**Section 10-2-15. Retailer Licensing.**

Every retailer of tobacco must apply for and receive from the Tax Commission a “Tobacco Retailer License” prior to establishing any place of business or retail outlet for the sale of tobacco within the tribal jurisdiction. Forms for such application and license shall be provided by the Tax Commission.

**Section 10-2-16. Tobacco Retailer License.**

The Tobacco Retailer License shall be valid for one calendar year from the date of issue and shall be nontransferable and nonassignable. A separate license shall be required for each separate location at which a retailer may establish a place of business or retail outlet. The license shall be conspicuously posted in a public area in each such place of business or retail outlet. A license fee of twenty dollars (\$20.00) shall be paid for each new or renewal license issued.

**Section 10-2-17. Vending Machine Permits.**

(A) Every wholesaler or retailer of tobacco must apply for and receive from the Tax Commission a “Tobacco Vending Machine Permit” prior to operating any vending machine within the tribal jurisdiction. Forms of such applications and permits shall be provided by the Tax Commission.

(B) The Vending Machine Permit shall be valid for a single calendar year from the date of issue and shall be non-transferable and nonassignable. A separate permit shall be required for each separate vending machine. The permit shall be attached to the vending machine in such a manner as to be clearly visible to the public and to persons purchasing tobacco therefrom. A fee of ten dollars (\$10.00) shall be paid for each new or renewal permit issued.

(C) Any operating vending machine from which tobacco may be purchased not having a Tobacco Vending Machine Permit attached thereto is contraband within the tribal jurisdiction and is subject to seizure and sale as is provided by law.

**CHAPTER 10-3  
SALES TAX**

**Section 10-3-1. Definitions.**

(A) **Consumer.** “Consumer” means any person who receives or comes into possession of property from a retailer by means of a sale of such property or who purchases services as a final consumer.

(B) **Person.** “Person” means any individual, company, partnership, firm, joint venture, association, corporation, estate, and trust, political entity to which this Title can be applied.

(C) **Property.** “Property” means all tangible personal property of every kind and description including without limitation, water and natural or artificial gas.

(D) **Retailer.** “Retailer” means any person who in the ordinary course of business sells any property or services to another, whether such sale would be described as a “wholesale” or “retail” sale.

(E) **Sale or Sales.** “Sale” or “sales” means all sales, barter, trades, exchanges, or other transfer or ownership for value of property or services from a retailer to any person no matter how characterized.

(F) **Services.** "Services" includes any activity involving:

- (1) sales of electricity, telephone, cable radio or television or mobile phone services and any utility services which are not personal property;
- (2) sales of admission to any place providing amusement, entertainment or recreation services except for admission to any tribal government activity or to historical, cultural, religious or social events of the Nation; or
- (3) sales of room rental services for a period of less than 30 consecutive days.

### **Section 10-3-2. Tax on Sales.**

There is hereby levied upon the sale of property and services within the tribal jurisdiction a tax of five percent (5%) of the actual sales price thereof exclusive of any rebates. If a sale is consummated by trades, barter, or exchange of anything other than money, the tax shall be computed at the fair market value of the property sold. Sales to the Nation tribal government are exempt from tribal sales taxes.

### **Section 10-3-3. Reserved.**

History: PBPN Resolution No. 2000-82, May 2, 2000

### **Section 10-3-4. Impact of Tax.**

(A) The impact of the taxes imposed by this Chapter is declared to be on the consumer and shall be added to the purchase price of the property or services sold and recovered from the consumer.

(B) Every retailer shall show the amount of such taxes paid as a separate item on any invoices or receipts which they may issue.

**Section 10-3-5. Payment of Tax.**

(A) Every retailer shall submit to the Tax Commission within fourteen (14) calendar days after the end of each calendar month a report on such forms as the sales and gross amount of sales taxes collected during that calendar month.

(B) Every retailer shall pay the gross sales taxes collected during a calendar month to the Tax Commission at the time as the report for that calendar month is submitted.

**Section 10-3-6. Records.**

Every retailer shall maintain for not less than three (3) years complete and adequate records including invoices showing all property received and sold or otherwise disposed of and all services sold, the price at which sold, and the amount of sales taxes collected and paid.

**Section 10-3-7. Sales by Retailers to the Nation and its Members.**

(A) Every retailer engaged in sales of property or services to the Nation or its members on the reservation shall have an affirmative duty to avoid the imposition of illegal state or local taxes on the Nation and its members and to impose the tribal taxes specified by this chapter. A retailer who has knowledge that a state or local tax is being imposed on the Nation or its members for a reservation transaction shall immediately cease the collection of such taxes and cause the collection of any applicable tribal taxes.

(B) A retailer who collects state or local sales or use taxes for reservation transactions and who either

(1) has actual or imputed knowledge that the imposition of such taxes is illegal or

(2) has been notified in writing by the Nation's Tax Commissioner that the imposition of such taxes is illegal shall immediately cease the collection of such taxes. Any retailer failing to comply with this section shall be subject to a penalty of up to \$10,000 for each month that it continues to collect such taxes.

(C) The Tax Commissioner may provide tribal and enrollment information to a retailer sufficient for the retailer to verify that transactions with the Nation or such members should not be subject to state or local taxes and should be subject to tribal taxes. Any such information retained by the retailer shall be maintained as strictly confidential and shall not be disclosed to anyone without the express written consent of the Nation. All disputes or issues concerning in any way such confidential

information shall be adjudicated in tribal court. In the event of the unauthorized disclosure of such confidential information, the Tax Commissioner may impose a penalty of up to \$10,000 for each such disclosure.

(Amended by PBP TC No. 2006-098, May 18, 2006)

## **CHAPTER 10-4 EARNINGS TAX**

### **Section 10-4-1. Definitions.**

For the purposes of this Chapter:

**(A) Calendar Year.** “Calendar year” means the period from January 1, until December 31, inclusive of each year.

**(B) Earnings.** “Earnings” means all wages, salaries, tips, and other employee compensation for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash which are subject to federal income tax withholding pursuant to 26 U.S.C. § 3401 *et seq.*

**(C) Employed Within the Tribal Jurisdiction.** “Employed within the tribal jurisdiction” means that the employee’s regular assigned workstation is some place within the territorial jurisdiction of the Nation notwithstanding that such employee may be assigned and perform employee duties outside the tribal jurisdiction.

**(D) Employee.** “Employee” is defined to mean and include any individual who performs a service for any person and receives earnings therefor.

**(E) Employer.** “Employer” means the person for whom an individual performs or performed any service of whatsoever nature, as the employee of such person.

**(F) Person.** “Person” means any individual, company, partnership, firm, joint venture, association, corporation, estate, trust, or political entity.

**(G) Regularly Performs Employee Services Within the Tribal Jurisdiction.** “Regularly performs employee services within the tribal jurisdiction” means that although the employee’s regular assigned workstation is not some place within the territorial jurisdiction of the Nation, the employee is assigned and performs employee duties within the tribal jurisdiction on a regular and recurrent basis whether or not such duties are assigned and performed pursuant to a fixed schedule.

**Section 10-4-2. Tax on Earnings.**

There is hereby levied upon earnings paid to any employee who is employed or who regularly performs employee services within the tribal jurisdiction an earnings tax equal to three (3%) percent of the employee's earnings during the calendar year.

**Section 10-4-3. Earnings Tax Collection at the Source.**

(A) Every employer making payment of earnings shall deduct and withhold from such earnings a tax determined by multiplying the percentage rate, as levied in Section 10-4-2, times the gross earnings of that individual for the pay period in which the earnings are paid or otherwise made subject to the direction of the employee. Each employer shall notify each employee in writing of the amount of tax deducted and withheld each pay period.

(B) The employer shall be liable for the payment of the tax required to be deducted and withheld by this Title and shall not be liable to any person for the amount of such payment.

(C) If the employer, in violation of this Section, fails to deduct and withhold the tax under this Title, and the tax is thereafter paid, the tax required to be deducted and withheld shall not be collected from the employer, but this Subsection shall not relieve the employer from liability for any penalties or interest which have accrued.

**Section 10-4-4. Payment of Earnings Tax and Reports.**

(A) Every employer shall submit to the Tax Commission within fourteen (14) days after the end of each calendar month, a report on such form as the Tax Commission shall prescribe showing each employee to whom earnings were paid, the address and social security number of each employee, and for each employee:

- (1) The cumulative gross amount of earnings paid during the calendar year prior to the current reporting period.
- (2) The cumulative gross amount of earnings taxes withheld and paid during the calendar year prior to the current reporting period.
- (3) The gross amount of earnings paid during the current monthly reporting period, and the rate of apportionment used, if any, for the current monthly reporting period and the basis for that apportionment rate.
- (4) The gross amount of the total earnings tax withheld during the current monthly reporting period.

(B) Every employer shall pay the gross earnings taxes collected during a calendar month to the Tax Commission at the same time as the report for that calendar month is submitted.

**Section 10-4-5. Records and Employee Notices.**

(A) Every employer shall maintain for not less than three years complete and adequate records including time sheets and payroll records showing the amount of earnings paid to each employee and the amount of earnings tax withheld and paid to the Tax Commission.

(B) Once each year, at the time Federal Wage Statements, Form W-2 Wage and Tax Statements, are delivered to the employees, the employer shall disclose to the employee in writing the gross earnings paid to the employee and the total earnings tax withheld and paid.

(C) Any employee-taxpayer may file an administrative appeal to receive a refund of any earnings taxes withheld in excess of the amount owed. Such appeal will be considered filed in a timely manner if the appeal is filed within ninety days of the date the employer discloses to the employee the total earnings and earnings taxes withheld pursuant to Subsection 10-4-5(B) of this Section.

**Section 10-4-6. Apportionment of Earnings.**

Whenever any employee is not employed within the tribal jurisdiction but regularly performs employee services within the tribal jurisdiction, that employee shall be entitled to fairly apportion his earnings and to delete from his taxable earnings such amount as it fairly attributable to his earnings received as a result of services rendered outside the tribal jurisdiction under such rules and regulations as the Tax Commission may prescribe. Such employee shall maintain for at least three years such time and attendance, travel, payroll, or other employee records as may be necessary to establish the basis for apportionment of the employee's earnings. The employee of such person shall not be required to deduct, or withhold, or pay pursuant to Section 10-4-3 and 10-4-4 any earnings tax on the earnings attributable to employee services rendered outside the tribal jurisdiction, provided, that such employee shall make the reports required by Section 10-4-4 for all such employees.

**Section 10-4-7. Penalties.**

Any employer who shall fail any report required by Section 10-4-4 on or before the due date thereof shall be liable for an additional penalty of twenty percent (20%) of the gross amount of the tax due and payable with that report plus interest at the statutory rate until paid.

**CHAPTER 10-5  
ECONOMIC DEVELOPMENT TAX**

**Section 10-5-1. Definitions.**

For the purpose of this Chapter:

(A) **Construction Contract.** “Construction contract” means all contracts for the construction of any facility, building, roadway, waterway, or any other structure of whatsoever kind or nature.

(B) **Earnings.** “Earnings” means all wages, salaries, tips, and other employee compensation for services performed by an employee for his employer.

(C) **Employee.** “Employee means any individual who performs a service for any person and receives earnings therefor.

(D) **Employer.** “Employer” means the person for whom an individual performs or performed any service of whatsoever, nature, as the employee of such person.

(E) **Engaged in Work on the Reservation.** “Engaged in work on the Reservation” means a person who if during any portion of a business enterprise or specific project, contract or subcontract, he or any of his employees spends a majority of his time performing work within the exterior boundaries of the Reservation.

(F) **Person.** “Person” means any individual, company, partnership, firm, joint venture, association, corporation, estate, trust, or political entity, except the Prairie Band Potawatomi Nation, and its governmental agencies.

#### **Section 10-5-2. Tax on Construction Contracts.**

There is hereby levied upon every covered construction contractor with a contract of \$100,000 or more a tax equal to ten (10) percent of the total contract amount.

#### **Section 10-5-3. Payment of Tax.**

(A) Every construction contractor engaged in work on the reservation shall submit to the Tax Commission within fourteen (14) calendar days after the end of each calendar month a report, on such form as the Tax Commission shall order, showing the total gross contract billings for that calendar month.

(B) Every construction contractor shall pay the taxes owed to the Tax Commission at the same time as the report for that calendar month is submitted.

#### **Section 10-5-4. Records.**

Every construction contractor shall maintain for not less than three (3) years complete and adequate records showing all contracts billings, receipts and other pertinent information.

**Section 10-5-5. Penalties.**

(A) Every construction contractor who shall fail to pay the taxes imposed by this article, shall be liable for the full amount of the tax owed plus interest at the statutory rate until paid.

(B) Willful failure to pay over the taxes imposed by this article shall make the construction contractor liable for an additional penalty of one hundred percent (100%) of the taxes due plus interest at the statutory rate until paid.

**CHAPTER 10-6  
MOTOR FUEL TAX**

**Section 10-6 Reserved.**

(Amended by PBP TC No. 2007-027, February 2, 2007)

**CHAPTER 10-7  
FRANCHISE TAX**

**Section 10-7-1. Franchise Taxes Payable by Tribal Corporation**

(A) The Tribal Tax Commission shall charge and collect from each tribal corporation an annual franchise tax, payable in advance for the period from July 1st in each year to July 1st in the succeeding year, beginning July 1st in the calendar year in which such corporation is required to file its first annual report at the rate of .001 of the amount represented on this reservation of the shareholder's equity of the corporation, as disclosed by the latest report filed by the corporation with the Tribal Secretary, but in any event not less than fifty dollars (\$50.00) and not more than twenty-five thousand dollars (\$25,000.00). For purposes of this section, shareholder's equity shall consist of the sum of (i) paid in capital stock, (ii) capital paid in, in excess of par, and (iii) retained earnings. The amount represented on this reservation of the retained earnings of the corporation shall be that proportion of the average value of its real and tangible personal property owned or rented and used on this reservation divided by the average total value of all its real and tangible personal property owned, rented or used, and the total sales of the corporation on this reservation divided by the total sales of the corporation everywhere.

(B) Payment of the franchise tax shall be in lieu of payment of a license fee after the initial license fee is paid for the first, partial year of operations on the reservation.

(C) If the corporation fails to file its annual report in any year within the time prescribed by Title 23, the proportion of its shareholder's equity represented on this reservation shall be deemed to be its entire shareholder's equity, unless its annual report is thereafter filed and its franchise tax thereafter adjusted by the Tribal Tax Commission in accordance with the provisions of this Chapter, in which case the

proportion shall likewise be adjusted to the same proportion that would have prevailed if the corporation had filed its annual report within the time prescribed by Title 23.

**Section 10-7-2. Assessment and Collection of Annual Franchise Taxes**

(A) It shall be the duty of the Tribal Tax Commission to collect all annual franchise taxes and penalties imposed by, or assessed in accordance with this Title. Between the first day of April and the first day of June of each year, the Tribal Tax Commission shall assess against each corporation required to file an annual report in such year, the franchise tax payable by it for the period from July 1st of such year to July 1st of the succeeding year. The Tribal Tax Commissioner shall mail a written notice to each corporation against which such tax is assessed, addressed to such corporation at its registered office on this Reservation, notifying the corporation:

- (1) Of the amount of franchise tax assessed against it for the ensuing year;
- (2) That objections, if any, to such assessment will be heard by the officer making the assessment on or before the fifteenth day of June of such year, upon receipt of a request from the corporation; and
- (3) That such tax and penalty shall be payable to the Tribal Tax Commission on the first day of July next succeeding the date of the notice. Failure to receive such notice shall not relieve the corporation of its obligation to pay the tax and penalty assessed, or invalidate the assessment thereof.

(B) The Tribal Tax Commission shall have power to hear and determine objections to any assessment and, after hearing, to change and modify such assessment. In the event of any adjustment of franchise tax with respect to which a penalty has been assessed for failure to file an annual report, the penalty shall be adjusted in accordance with the provisions of this Chapter imposing such penalty.

(C) All annual franchise taxes and all penalties for failure to file annual reports shall be due and payable on the first day of July each year. If the annual franchise tax assessed against any corporation subject to the provisions of this Chapter together with all penalties assessed thereon, shall not be paid to the Tribal Tax Commission on or before the thirty-first day of July of the year in which such tax is due and payable, the Tribal Tax Commission may institute an action against such corporation in the name of the Nation, in any Court of competent jurisdiction, for the recovery of the amount of such franchise taxes and penalties, together with the cost of suit, and prosecute the same to final judgment.

(D) For the purpose of endorsing collection, all annual franchise taxes assessed in accordance with the Chapter, and all penalties assessed thereon and all interest and costs that shall accrue in connection with the collection thereof, shall be a prior and first lien on the real and personal property of the corporation from and including the first day of July of the year when such franchise taxes become due and payable until such taxes, penalties and interests and costs have been paid.

**Section 10-7-3. Interrogatories by the Tribal Tax Commissioner**

(A) The Tribal Tax Commissioner may propound to any corporation, domestic or foreign, subject to the provisions of this Chapter and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this Title applicable to such corporation. Such interrogatories shall be answered within thirty (30) days after the mailing thereof, or within such additional time as shall be fixed by the Tribal Tax Commissioner, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the Chief Executive Officer, Chief Financial Officer or Secretary thereof. The Tribal Tax Commission and Tribal Secretary need not file any document to which such interrogatories relate until such interrogatories are answered as herein provided.

(B) Interrogatories propounded by the Tribal Tax Commissioner and the answers thereto shall not be open to public inspection nor shall the Tribal Tax Commission disclose any facts or information obtained therefrom except insofar as may be required to be made public by the official duties of said office or in the event such interrogatory or the answers thereto are required for evidence in any criminal or civil proceedings or in any other action by the Nation.

**Section 10-7-4. Penalties Imposed Upon Corporations**

(A) If the franchise tax assessed in accordance with the provisions of this Chapter shall not be paid on or before the thirty-first day of July, it shall be deemed delinquent, and there shall be added a penalty of one percent (1%) for each month that the same is delinquent commencing with the month of August.

(B) Each corporation that fails to or refuses to answer truthfully and fully within the time prescribed by this Chapter interrogatories propounded by the Tribal Tax Commissioner in accordance with the provisions of this Chapter, shall pay a civil penalty of one hundred dollars (\$100.00) per day, and not to exceed ten thousand dollars (\$10,000.00).

**Section 10-7-5. Penalties Imposed Upon Officers and Directors**

Each officer and director of a corporation, who fails or refuses within the time prescribed by this Chapter, to answer truthfully and fully interrogatories propounded to him by the Tribal Tax Commissioner in accordance with the provisions of this Chapter, or who signs any articles, statements, report, application, or other document filed with the Tribal Tax Commission which is known to such officer or director to be false in any material aspect, shall pay a civil penalty of one hundred dollars (\$100.00) per day, and not to exceed five thousand dollars (\$5,000.00).

(Enacted by PBP TC No. 87-37, August 26, 1987; amended by PBP TC No. July 20, 1989; amended PBP TC No. 92-66, November 18, 1992; Title 10-6 enacted by PBP TC No. 99-1, January 11, 1999; amended by PBP TC No. 99-66, May 11, 1999; amended by PBP TC No. 2000-26, February 1, 2000; amended by PBP TC No. 2000-82, May 2, 2000; amended by PBP TC No. 2000-209, November 21, 2000; PBP TC No. 2002-149, December 5, 2002; Title 10-3 amended by PBP TC No. 2006-098, May 18, 2006 amended by PBP TC No. 2007-027, February 2, 2007; amended by PBP TC No. 2008-121, May 22, 2008)

