

POTAWATOMI LAW AND ORDER CODE

**TITLE 22
EMPLOYMENT CODE**

**CHAPTER 22-1
GENERAL PROVISIONS**

Section 22-1-1. Title.

This code may be known and cited as the Employment Code of the Prairie Band Potawatomi Nation.

Section 22-1-2. Preamble.

(A) The Prairie Band Potawatomi Nation of the Potawatomi Reservation is a self-governing, federally recognized Indian Nation deriving its governing authority from its inherent sovereignty.

(B) The Tribal Council of the Prairie Band Potawatomi Nation is authorized by the Nation's Constitution, Article V to, inter alia: (i) act on administrative matters before it, including the appointment and removal of subordinate tribal officials and employees, to contract with individuals, to administer tribal matters in accordance with personnel procedures established by the Tribal Council, to make expenditures from available funds for tribal purposes, including salaries or remuneration of tribal officials or employees, and to delegate any of these powers to subordinate officers, committees or cooperative associates; (ii) enact laws or ordinances and take other actions to regulate law and order; and, (iii) enact laws or ordinances and to take other actions to promote and protect the health, peace, morals, education or welfare of the Nation or its members or to serve any other appropriate governmental or tribal purpose.

Section 22-1-3. Interpretation and Application.

As a guide to the interpretation and application of this Employment Code, the public policy of the Prairie Band Potawatomi Nation is declared to be as follows:

(A) Employment by the tribal government and its enterprises has a significant impact on the well being of the tribal government, its members and Reservation residents. The Nation shall exercise its inherent sovereignty, the right of self government, over employment matters to the maximum extent practicable in order to protect the sustainability and vitality of tribal self government, its members, its enterprises and the Reservation. Except as specifically provided in legislation duly adopted by the United States of America made expressly applicable to Indian tribes, or as may be specifically waived hereafter by the Tribal Council or General Council of the Nation, the employment

laws or regulations of other governments, and the policies and practices of non-tribal enterprises, which conflict with and/or which may be detrimental to the tribal interests expressed herein shall not be binding upon or applicable to the Nation based upon its sovereign, self government status.

(B) The Nation desires to attract qualified employees, particularly tribal members, to the tribal work force. It is the desire of the Nation to effectively compete with other employers for personnel who have the abilities and skills necessary to effectively sustain and enhance the Nation's self government and to further tribal economic development goals and render quality services to the tribal membership.

(C) Jobs on or near the Potawatomi Reservation are an important resource for tribal members, and tribal members have a right to obtain their share of such opportunities as they become available. Tribal members and other Indians, particularly those on or near Reservations, have unique employment rights and the Nation's tribal government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of tribal members and other Indians. It is of crucial importance to create employment and training opportunities for tribal members and for other Indians, and to eliminate employment discrimination against Indian people. An integral part of attaining this goal is constituted by the structuring of employment and training opportunities so as to provide for the hiring of Indians who are qualified and for the training of Indians in those areas in which there is not a sufficient number of qualified Indians to meet the employment opportunities. The Prairie Band Potawatomi Nation believes it is important to establish an Employment Code in order to optimize the aforementioned rights and powers, to increase employment of tribal members and other Indian workers and to eliminate discrimination against all Indians.

Section 22-1-4. Jurisdiction.

(A) Jurisdiction. This code shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in all employment matters relating to work to be performed on the Prairie Band Potawatomi Reservation and the Indian Country of the Prairie Band Potawatomi Nation.

(B) Relation of the code to other laws.

(1) Statutes, regulations and agreements with the United States. This code will not be interpreted in such a way as to conflict with statutes, regulations, or other laws of the United States, or agreements with the United States specifically applicable to the subjects of this code for Indian tribes. Where a conflict may appear between this code and any such provision, such statute, regulation or agreement of the United States will govern if it has specific application and if it clearly and expressly is in conflict with the provisions of this code so as to pre-empt these code provisions.

(2) State statutes and laws. This code shall govern and shall pre-empt the application of all state laws unless the Tribal Council shall expressly decide

otherwise by resolution in specific instances. There shall be no implied waiver of this provision and a waiver in one instance shall not be construed to be a waiver of any or all future conflicts.

(3) **Other tribal laws.** To the extent that this code may conflict with other tribal laws or ordinances, the provisions of this code shall govern unless the Tribal Council expressly waives application of the provisions of this code in each specific instance. A waiver in one instance shall not be construed to be a waiver of any or all future conflicts.

(C) **Code to be liberally interpreted.** This code shall be liberally construed and applied to carry out its purposes and intent of promoting the Nation's self government interests in regulating economic activity on the Nation's Reservation and in maintaining a qualified work force to achieve the Nation's governmental objectives.

(D) **Miscellaneous provisions.** Should any provision of this code be found to be null, void or contrary to law, such a finding will not affect the validity and enforceability of the remainder hereof.

Section 22-1-5. Definitions.

(A) **Tribal government.** "Tribal government" means all officers, directors, managers, supervisors and employees of the Prairie Band Potawatomi Nation, regardless of whether employed by the Nation or any of its Commissions, Committees, Boards, Agencies, Departments or otherwise.

(B) **Nation's Enterprise.** "Nation's enterprise" means any tribally formed or chartered entity, or a corporation, partnership, joint venture, or other business, commercial or nonprofit, in which the Nation owns at least 50% of the equity interest in the entity. If another entity is serving as manager/employer of an enterprise of the Nation, the provisions of this Code shall apply to that enterprise except to the extent that Code provisions conflict with a specific term or condition of an agreement with that entity entered into prior to the effective date of this Employment Code.

(C) **Tribal Members.** "Tribal members" shall mean adult enrolled members of the Prairie Band Potawatomi Nation.

(D) **Reservation.** "Reservation" shall mean all Indian Country of or relating to the Prairie Band Potawatomi Nation, including but not limited to that certain Indian Reservation established for the Prairie Band Potawatomi Nation in Article 4 of the Treaty with the Potawatomi Nation, dated June 17, 1846, 9 Stat. 853, including all lands, islands, waters, roads, or any interests therein, whether in trust, restricted or fee status and notwithstanding the issuance of any patent or right-of-way or other interest in those lands, and such other lands, islands, waters or any interest therein hereafter added to the "Reservation."

(E) **Covered Employer.** "Covered employer" means any person, firm, association, corporation and other business entity operating its enterprise within the territorial

jurisdiction of the Nation, performing contracts entered into with the Nation with a contract amount in excess of \$50,000 and employing five or more employees to perform the contract, excluding local, state and federal governments.

(F) Local Indian. "Local Indian" means any adult Indian who is an enrolled member of a federally recognized Indian tribe, band or Nation who resides within the lands and territories of the Prairie Band Potawatomi Reservation, or within thirty miles of the exterior boundaries of said lands.

(G) Indian. "Indian" means any adult enrolled member of a federally-recognized Indian Tribe, Band, or Nation.

(H) Labor Organization. "Labor organization" means any organization of employees organized for the purpose of dealing with an employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment and desiring to operate within the territorial jurisdiction of the Nation.

Section 22-1-6. Sovereign Immunity.

Nothing in this Code shall be construed as waiving the sovereign powers or immunities of the Prairie Band Potawatomi Nation or its agents, entities, instrumentalities, employees, or officials, nor shall anything in this Code be construed as imposing any requirement of the National Labor Relations Act on the Nation, its enterprises, agents, entities, instrumentalities, employees, or officials.

Section 22-1-7. Severability.

The provisions of this Code are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, then that declaration shall not effect the remaining provisions of this Code.

CHAPTER 22-2 EMPLOYMENT ADMINISTRATION

Section 22-2-1. Administration and Personnel Policies

(A) General Manager to Manage Employment. Except as otherwise provided by action of the Tribal Council, including but not limited to Section 22-2-2, the General Manager of the Nation's tribal government is authorized to hire, promote, discipline, supervise and discharge employees in order to carry out the operational work of the Nation's government; and, if not delegated to another individual, position or company by contract, personnel manual or personnel policy, or operation of law, to exercise the same authority over each of its enterprises, in accordance with the Nation's laws. Except as otherwise provided, the Tribal Council desires to leave all non-excepted personnel

matters to the General Manager, intervening only when all other means of resolving personnel issues have failed.

(B) Personnel Policies and Personnel Manual. The Tribal Council has determined that employment related policies should be set forth for the General Manager and other employees in carrying out personnel matters, and these policies should ensure that both the interests of the Nation and the employee are protected, and an environment exists where employees can enjoy their work, feel secure in their positions, and make a positive contribution toward the goals of the Nation. The Tribal Council adopts the Personnel Manual of the Nation as developed by its Human Resources Department to establish policies, procedures and practices for all employment with the Nation's government and its enterprises in which the Nation is the direct employer. The Nation's Personnel Manual is subject to modification from time to time as deemed appropriate by a majority vote of the Tribal Council. The various departments, commissions and other entities of the Nation may supplement the provisions of the Personnel Manual upon prior written approval by resolution of the Tribal Council.

(Amended by PBP TC No. 2007-157 on August 15, 2007)

Section 22-2-2. Tribal Council Approval of Employment with Nation.

The Tribal Council of the Nation shall approve all new employment positions proposed for the Nation's government and enterprises, and shall have final authority over all new and renewal employment contracts with the Nation prior to the effective date of such employment. In order to protect and maintain the sovereign governmental interests of the Nation in serving its citizens and other Reservation residents through revenues generated by its enterprises in which the Nation owns an interest in whole or part, the Tribal Council also retains the right to have final management authority on the employment status, terms and conditions of individuals who apply for or who are employed by the Nation's enterprises. No approval of employment, or an employment term or condition, shall be given unless the Tribal Council has pre-approved, or concurrently approved, any necessary funding for the position or term or condition. Under no circumstances shall inaction by the Tribal Council be considered to create an implied contract or contract by acquiescence.

(Amended by PBP TC No. 2004-125, July 30, 2004, amended by PBP TC No. 2007-216, November 20, 2007)

Section 22-2-3. Employment Preference.

(A) Who is entitled to Preference. The Nation's tribal government and its enterprises shall give employment preference in the following order to qualified applicants: enrolled tribal members, other Indians, spouse of an enrolled tribal member, parent of an enrolled tribal member, child of an enrolled tribal member, and Non-Indians. An applicant is deemed qualified for the position under this section if his or her skills, experience and/or education provide the applicant with the objective capability of satisfactorily performing the required duties and responsibilities of the position. Covered employers shall give preference in the following order: to tribal members to the extent

not in conflict with applicable controlling law, local Indians, all other Indians, and Non-Indians.

(B) Employment Actions Subject to Preference. Preference shall be given to such persons meeting the threshold requirements of the job, in all decisions relating to hiring, promotion, training, layoffs, and all other aspects of employment.

(C) Notice of Preference Requirement. The obligation of all covered employers to comply with the Nation's Employment Code shall be made known to all existing and future covered employers. All bid announcements issued for work within the jurisdiction of the Nation shall contain a statement that the successful bidder will be obligated to comply with this Code.

(Amended by PBP TC No. 2007-216, November 20, 2007)

Section 22-2-4. Training.

(A) Job Training. All covered employers shall participate in training programs designed to assist Indians to become qualified in the various job classifications reused by the employer. Employers engaged in construction and other trades shall participate in training programs established or sponsored by the Nation and employers may be required to share part of the cost of such training.

(B) Cultural Awareness. Both the Nation and the covered employer shall share the responsibility and cost of providing cultural awareness training for employees. Employers may be required to integrate culturally appropriate employee assistance programs as necessary for the employer to retain Indian employees and for Indian employees to optimize all opportunities afforded by the enterprise or project. Specialized programs may be initiated by the employer or the Director but must be mutually agreed upon and beneficial to both the employees and employers.

Section 22-2-5. Job Qualifications, Accommodation, Personnel Requirements, and Religious Accommodations.

A covered employer may not use any job qualification criteria or personnel requirements which serve as barriers to the employment of tribal members and other Indians and which are not required by business necessity. The burden shall be on the employer to demonstrate that such criterion or requirement is required by business necessity. If the employer fails to meet this burden, it will be required to eliminate the criterion or personnel requirement at issue. Covered employers shall also make reasonable accommodation to Indian employees for the generally accepted religious beliefs and cultural traditions of Indian tribes.

Section 22-2-6. Retaliation

No employer shall punish, terminate, harass or otherwise retaliate against any employee or person who has exercised his or her rights under this Code or has assisted another to do so. Further, any person who harasses or abuses an employee of the Nation who is carrying on official duties under this Code may be removed from the Reservation on Order of the Tribal Council. An employer shall be responsible for the actions of all its employees, supervisory or otherwise, and for the action of its subcontractors and their employees in regard to prohibitions in this Code.

Section 22-2-7. Non-Compliance by an Employer.

(A) Individual complaint. Any Indian, group of Indians or representatives of a class of Indians who believe that they have been denied an applicable preference due to the failure of an employer to comply with this Code, or who believe that they have been discriminated against by a covered employer because they are Indian, may file a complaint with the Tribal Human Resources Department. Indians may file whether or not they can show that they were personally harmed by the employer's non-compliance.

(B) Sanctions. A committee established by the Tribal Council shall investigate, or cause to be investigated, the Complaint including an opportunity for the employer to be heard, by written response or if deemed appropriate by hearing, and make a report to the Tribal Council of the investigative findings. The Tribal Council may impose any or all of the following sanctions where it determines a violation of this Code has occurred based upon the committee's findings:

- (1)** Deny such party the right to commence business within the lands and territories of the Potawatomi Reservation;
- (2)** Impose a civil remedial penalty on such party in an amount not to exceed \$500 for each violation (each day of noncompliance shall be considered a separate violation);
- (3)** Suspend such party's operation within the lands and territories of the Potawatomi Reservation;
- (4)** Terminate such party's operation within the lands and territories of the Potawatomi Reservation;
- (5)** Deny the right of such party to conduct any further business within the lands and territories of the Potawatomi Reservation;
- (6)** Order such party to make payment of back pay to any aggrieved Indian;
- (7)** Order such party to dismiss any employees hired in violation of the Nation's Employment Code;
- (8)** Order the party to take such other action as is necessary to ensure compliance with, or to remedy any harm caused by a violation of, this Code. The Tribal Council's decision shall be in writing, shall be served on the employer by registered mail or in person, and shall be submitted no later than thirty days after the committee's report is submitted to the Tribal Council.

(C) Final Decision. The decision of the Tribal Council on the Complaint shall be final and nonappealable.

(Enacted by PBP TC No. 2003-023, February 13, 2003)

CHAPTER 22-3 LABOR ORGANIZATIONS PROHIBITED

Section 22-3-1. Labor Organizations are Prohibited.

(A) General Prohibition of Labor Organizations. The Nation's interest in maintaining its self government and the stability of its tribal government and in controlling economic activity affecting its government, its enterprises and its members, requires that the Nation exercise its self government authority, territorial management and independence by prohibiting the formation or operation of any labor organization, labor union or association applicable to employment with the Nation' applicable to employment with the Nation's tribal government or in any of the Nation's enterprises, and requires that the Nation exercise its fundamental right to exclude from its Reservation those who would violate its laws that are designed to preserve and protect its right to self government, including the provisions of this Chapter.

(B) Actions Specifically Prohibited. For purposes of employment within the scope of subsection (a) above:

(1) No person shall be required to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment.

(2) No person, as a condition of employment or continuation of employment, shall be required to pay any dues, fees, or other charges of any kind to any labor union or labor organization or to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessment or other charges regularly required of members of a labor organization.

(3) No person shall be required, as a condition of employment or continuation of employment to be recommended, approved, referred, or cleared by or through a labor organization.

(4) It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization

(5) It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or employer, or officer or agent thereof, by any threatened or actual intimidation of an employee or prospective employee or his parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to his property, to compel or attempt to compel such employee or prospective employee to join, affiliate with, or financially support a labor organization. It shall be

unlawful to cause or attempt to cause such employee to be denied employment or discharged from employment because of nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employee.

(6) Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and an employer which violates the provisions of this Code is hereby declared to be against public policy, an illegal combination or conspiracy in restraint of trade, null and void and of no legal effect. Any strike, picketing, boycott, or other action by a labor organization for the sole purpose of inducing or attempting to induce an employer to enter into an agreement prohibited by this Code is hereby declared to be for an illegal purpose and is a violation of this Code.

Section 22-3-2. Additional Violations of This Code.

In addition to any violations already specified in this Code, it shall be a violation of this Code for any person to:

(A) coerce or intimidate any employee in the enjoyment of his or her legal rights expressed by this Code; coerce or intimidate any elected or appointed tribal official; or intimidate the family, picket the domicile, or injure the person or property of any employee or tribal official;

(B) engage in picketing in any manner which constitutes a tribal offense, including picketing in a manner to prevent ingress to and egress from any premises.

Section 22-3-3. Sanctions for Violations.

The procedures and remedies or penalties provided in Section 22-2-7 (A) through (C) are hereby incorporated into this Chapter 22-3 and apply to violations of the provisions of this Chapter 22-3.

(Enacted by PBP TC No. 2003-023, February 13, 2003; amended by PBP TC No. 2004-125, July 30, 2004; amended by PBP TC No. 2007-216, November 20, 2007; amended by PBP TC No. 2007-157, August 15, 2007)

**CHAPTER 22-4
EMPLOYMENT DISPUTES TRIBUNAL**

Section 22-4-1. Employment Disputes Tribunal. Establishment.

Pursuant to Article VI, Section I of the Constitution, the Employment Disputes Tribunal (Tribunal) is established as part of the Prairie Band Potawatomi Nation Judicial Council.

Section 22-4-2. Purpose.

The purpose of the Tribunal is to provide employees of the Nation with a forum for employment dispute appeals. No employee shall be penalized for proper use of Tribunal procedures; however, employee(s) raising complaints or disputes in bad faith, for harassment or frivolous purposes may be disciplined. The Tribunal is to be an independent and unbiased body; magistrates are not employee advocates and shall give equal attention to both the employee and employer. The Tribunal shall apply the “abuse of discretion” standard of review to the final written decision reached by the Nation’s General Manager for each employment related dispute.

Section 22-4-3. Definitions.

In this Section, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

- (A) **Abuse of Discretion.** “Abuse of Discretion” shall mean the standard of review that the Tribunal shall apply to the employment dispute at issue. The General Manager’s decision regarding an employment dispute is made in his or her professional discretion and that decision shall not be altered unless the Tribunal determines that the General Manager abused professional discretion.
- (B) **Chair.** “Chair” shall mean the chairperson of the Tribunal. Where the Chair is unavailable or otherwise disqualified from participating in a Tribunal proceeding, the Vice-Chair shall act in place of the Chair. Where both the Chair and the Vice-Chair are unavailable or otherwise disqualified from participating in a Tribunal proceeding, the Tribunal may, by consensus, appoint an acting Chair.
- (C) **Conflict of Interest.** “Conflict of Interest” shall mean any situation where a magistrate has a close family member who is a party to the dispute or where the magistrate may not be able to make an unbiased decision. A close family member is defined as a spouse, son or daughter, sibling, parent or step-parent, aunt or uncle, grandparent, or any other member living in the household.
- (D) **Government Employment Related Dispute.**
 - (1) “Government Employment Related Dispute” shall include the following:
 - (a) The interpretation or application of PBPN employment or other applicable policy in formal disciplinary actions.

- (b) Review of management employment decisions as they relate to the appealing employee.
- (c) Other management decisions allegedly having a negative impact on the appealing employee.
- (2) “Government Employment Related Dispute” shall not include the following:
 - (a) Determination of base salary.
 - (b) Selection for jobs or reassignment.
 - (c) Performance ratings.
 - (d) Requests to change policies of the Nation.
 - (e) Appeals on behalf of another employee.
 - (f) Employment terminations.

Section 22-4-4. Scope of Jurisdiction.

- (A) The Tribunal shall hear government employment-related disputes, as defined in this section. It shall also hear termination proceedings lawfully pending on December 6, 2007. No request for review of an employment dispute shall be filed with the PBPN District Court until all governmental administrative remedies have been exhausted.
- (B) Decisions made by the Tribunal are final opinions, and are not subject to appeal to the District or Appellate Court or to the Tribal Council.

(Amended by PBP TC No. 2008-124, May 21, 2008; amended by PBP TC No. 2008-246, November 7, 2008)

Section 22-4-5. Appointment and Removal of Magistrates.

- (A) The Tribunal is composed of five magistrates, each appointed for a term of four years. Tribal Council shall appoint two magistrates and the Nation’s employees shall appoint two magistrates. These four magistrates shall appoint the fifth magistrate.
- (B) Prior to their seating, magistrates shall complete all requirements of the PBPN Human Resource Department for drug testing and background checks. Magistrates shall be removed by their appointing authority if the magistrate:
 - (1) Breaches any confidentiality of the Tribunal.
 - (2) Refuses to submit to or fails a drug test or has an unsatisfactory background check, pursuant to the PBPN Personnel Manual.
- (C) Magistrates may be removed at the discretion of their appointing authority.

Section 22-4-6. Duties and Responsibilities.

- (A) A Chairperson of the Tribunal shall be selected by a consensus of magistrates. The chair shall be responsible for receipt and retention of correspondence including requests for review by the Tribunal, notices of hearings, notices declining jurisdiction, meeting minutes and other correspondence. To ensure privacy and confidentiality: all documents, paperwork, and other materials pertaining to disputes shall be maintained in the District Court. Any personnel file/s shall remain with the Human Resource Department.
- (B) Quorum: The presence of a majority, three (3) or more members, of the Tribunal constitutes a quorum and the Tribunal may conduct official business by majority vote of the quorum.
- (C) Magistrates who have a conflict of interest as defined in this section shall disqualify themselves. Parties to a dispute may not disqualify a magistrate.
- (D) Magistrates shall not discuss confidential information regarding a dispute or seek advice from anyone not on the Tribunal, except legal counsel.
- (E) Magistrates shall familiarize themselves with applicable PBPN policy and procedures. When necessary, magistrates must familiarize themselves with policy and procedure and other directives of individual government departments.
- (F) Tribunal hearings shall be held in the PBPN District Court.

Section 22-4-7. Procedure.

- (A) A PBPN employee with an employment dispute who is not satisfied with the decision of the General Manager regarding said dispute and who has exhausted the administrative procedures, pursuant to the PBPN Personnel Manual, may request a review by the Tribunal by filing with the District Court.
- (B) An employee requesting review by the Tribunal must file a written request for review with the District Court within 10 business days of receiving the General Manager's final written decision.
- (C) The employee shall submit a request for review in writing which shall include the following information:
 - (1) The specific employment decision or action to be reviewed,
 - (2) The policy or procedure that was improperly applied and how it was misapplied,
 - (3) How the employee was adversely affected by the action, and
 - (4) What specific remedy the employee seeks through the Tribunal review.

- (D)** Upon filing the request for review, the District Court shall forward the written request for review to the Tribunal Chair within 10 business days.
- (E)** The Tribunal shall have 10 business days to determine if the dispute is within the jurisdiction of the Tribunal and to issue written notice for a hearing or written notice citing lack of jurisdiction to hear such request.
- (F)** The Tribunal shall work with the office of the General Manager to secure necessary documentation and witnesses.
- (G)** The Tribunal shall consider only facts, evidence, and testimony that is relevant to the dispute at the hearing.
- (H)** The Tribunal shall apply the standard of review “abuse of discretion” to the evidence presented at the hearing.
- (I)** The Tribunal shall issue a written final opinion no later than 10 business days after the hearing that describes the reason/s to affirm or alter the decision of the General Manager.
- (J)** The Tribunal shall provide a copy of the final opinion to the employee and the General Manager.

(Amended by PBP TC No. 2008-100, April 28 2008, amended by PBP TC No. 2008-246, November 7, 2008)

(Enacted by PBP TC No. 2003-023, February 13, 2003; amended by PBP TC No. 2004-125, July 30, 2004; amended by PBP TC No. 2007-216, November 20, 2007; amended by PBP TC No. 2007-157, August 15, 2007; amended by PBP TC No. 2008-074, March 19, 2008; amended by PBP TC No. 2008-124, May 21, 2008; amended by PBP TC No. 2008-100, April 28 2008; amended by PBP TC No. 2008-246, November 7, 2008)