



# **PUEBLO OF ISLETA**

P.O. BOX 1290  
ISLETA, NM 87022

## **PUEBLO OF ISLETA RESOLUTION NO. 2009-166**

### **ADOPTING CIGARETTE TAX AND PERMIT REQUIREMENTS**

WHEREAS, the Pueblo of Isleta is a federally recognized Indian Tribe organized under the Indian Reorganization Act of 1934 pursuant to a Tribal Constitution as amended, exercising all inherent governmental powers and Tribal sovereignty; and

WHEREAS, the Tribal Council is the legislative body of the Pueblo of Isleta with the authority to enact such tribal laws necessary to protect the peace, safety, property, health and general welfare of its members and residents as authorized by Article 5, Section 2.e. of the Tribal Constitution of the Pueblo of Isleta; and

WHEREAS, the Tribal Council has the authority to levy and collect taxes, fees, and assessments as authorized by Article 5, Section 2.f. of the Tribal Constitution of the Pueblo of Isleta; and

WHEREAS, the power to tax is an essential attribute of Indian sovereignty because it is an instrument of self-government and territorial management; and

WHEREAS, the Pueblo of Isleta has a unique cigarette market consisting of numerous tribal member owned cigarette businesses and tribal government owned cigarette outlets; and

WHEREAS, the State of New Mexico provides a tax exemption from State cigarette tax for cigarettes sold on tribal lands by licensed tribal vendors and the Isleta Pueblo tribal cigarette market benefits from this important exemption; and

WHEREAS, the Tribal Council recognizes the need to take proactive actions to protect and regulate the Pueblo's tribal cigarette market as shown by its adoption on February 22, 2009 of Resolution 2009-022, *Protection of Tribal Cigarette Market on Pueblo of Isleta*, and to mitigate any adverse actions by the State of New Mexico that would change the State cigarette tax or its tax structure;

WHEREAS, the Tribal Council considered implementing a tribal cigarette tax as a means to regulate and protect the Pueblo's tribal cigarette market and generate reasonable and reliable revenue to support essential governmental services for health, education, infrastructure, and other critical tribal needs or programs; and

WHEREAS, the Tribal Council recognized the impact of imposing a tribal cigarette tax on individual cigarette vendors and authorized a Tribal Cigarette Tax Working Group consisting of four Tribal Council representatives and individual vendors to address issues and vendor concerns relating to a tribal cigarette tax and make recommendations back to the Tribal Council; and

WHEREAS, the Tribal Cigarette Tax Working Group met on sixteen occasions over the course of over one year in an effort to share information about the cigarette market on Isleta Pueblo and allow vendor input on a proposed cigarette tax structure and ordinance; and

WHEREAS, the Tribal Council considered the comments and recommendations submitted by the Tribal Cigarette Tax Working Group on the proposed Ordinance; and


WHEREAS, the Tribal Council has determined that it is in the best interests of the Pueblo and its tribal cigarette market to approve the attached Cigarette Tax and Permit Requirements.

NOW THEREFORE BE IT RESOLVED THAT the Tribal Council hereby approves and adopts the attached Cigarette Tax and Permit Requirements and that such law shall apply to all persons selling or receiving cigarettes and tobacco products on or from Pueblo of Isleta lands; and

BE IT FURTHER RESOLVED THAT the Tribal Council directs that a copy of the Cigarette Tax and Permit Requirements and this Resolution be submitted to the Bureau of Indian Affairs – Southern Pueblos Agency for approval pursuant to the Tribal Constitution.

**CERTIFICATION**

The foregoing resolution was considered and adopted at a duly called meeting of the Isleta Pueblo Tribal Council on the 18th day of December, 2009, at which a quorum was present with -11- in favor of, -0- opposed, and -0- abstaining.

  
\_\_\_\_\_  
Governor Pueblo of Isleta

  
\_\_\_\_\_  
President of Tribal Council

ATTEST:  
  
\_\_\_\_\_  
Tribal Council Secretary



## PUEBLO OF ISLETA

P. O. BOX 1270, ISLETA, NM 87022

December 21, 2009

Robert Lacapa, Superintendent  
SOUTHERN PUEBLOS AGENCY  
Bureau of Indian Affairs  
P.O. Box 26567  
Albuquerque, NM 87125-6567

Re: Pueblo of Isleta

Dear Superintendent Lacapa:

The Pueblo of Isleta Tribal Council adopted the "Pueblo of Isleta Tax Ordinance – Chapter 6, Cigarette Tax and Permit Requirements" on December 18, 2009. Copies of the Ordinance and the Tribal Council Resolution are enclosed. Article V, Section 2.e of the Pueblo's Tribal Constitution requires that the Secretary of the Interior approve ordinances enacted by the Tribal Council. As required, we are requesting review and approval of the Cigarette Tax and Permit Requirements.

Should you have any questions about the Tax Ordinance, please contact our attorney, Ms. Carolyn Abeita, at (505) 242-7352. Your prompt review and approval of the Tax Ordinance is appreciated.

Sincerely,

PUEBLO OF ISLETA

  
J. Robert Benavides  
Governor

Enclosures





# PUEBLO OF ISLETA

P.O. BOX 1290  
ISLETA, NM 87022

## PUEBLO OF ISLETA TAX ORDINANCE

### CHAPTER 6

(enacted December 18, 2009)

## CIGARETTE TAX AND PERMIT REQUIREMENTS

### SECTION 6.01. General Provisions

A. **Short Title.** The tax imposed by this Chapter shall be known as and may be cited as the “Cigarette Tax” of the Pueblo of Isleta.

B. **Purpose.** The purpose of this Chapter is to protect and promote the Pueblo of Isleta’s sovereignty and right of self-governance through the taxation and regulation of sales and distribution of cigarette and tobacco products within the Pueblo of Isleta; to protect and promote its unique tribal cigarette market, individual tribal member owned businesses and tribal owned outlets; and to generate reasonable and reliable revenues to conduct essential governmental functions which benefit all tribal members and residents.

C. **Applicability.** This Chapter applies to all persons selling cigarettes or tobacco products in any quantity within the Pueblo of Isleta; provided that nothing in this Chapter shall be construed as regulating in any way, the use, consumption, trading, sale or giving away of traditional tobacco within Pueblo Lands.

### SECTION 6.02. Definitions

As used in this Chapter:

A. **“Business Day”** means Monday through Friday, excluding holidays and weekends. If a due date falls on a legal holiday, then the due date shall be the next business day following the holiday.

B. **“Business Permit”** means the permit issued by the Pueblo pursuant to the Pueblo of Isleta Business Permit Policy. The permit authorizes the holder to receive and sell cigarettes and tobacco products on or from Pueblo Lands.

C. **“Carton”** means the package or container of cigarette packs, typically containing ten (10) cigarettes packs, but could contain more or less.

D. **“Cigarette”** means any roll of tobacco or substitute for tobacco wrapped in paper.

E. **“Cigarette Tax”** means the tax imposed by this Chapter on the cigarettes sold on or from Pueblo Lands.

F. **“Distributor”** means any person or business that ships, transports, or imports cigarettes and/or tobacco products onto Pueblo Lands or in any manner acquires or possesses cigarettes and/or tobacco products for wholesale or resale purposes.

G. **“Effective Date”** means the date on which the Chapter is approved by the United States Secretary of the Interior and becomes law pursuant to the Pueblo’s Constitution.

H. **“Minor”** means any individual under eighteen (18) years of age.

I. **“Pack”** means any package of cigarettes, typically containing twenty (20) cigarettes, but could contain more or less cigarettes. The definition does not include a carton.

J. **“Permittee”** means any person who has been issued and is the holder of a Pueblo of Isleta Business Permit.

K. **“Person”** means any person or entity, including any individual, business, partnership, corporation, association, organization, or other legal entity of any kind.

L. **“Pueblo”** means the Pueblo of Isleta.

M. **“Pueblo Lands”** means all lands within the exterior boundaries of the Pueblo of Isleta, and lands now or hereafter held in trust for the Pueblo’s benefit by the United States and any other Indian Country over which the Pueblo exercises sovereign governmental authority.

N. **“Retailer”** means any person or business that sells cigarettes and/or tobacco products at retail to a consumer and the sale is not for resale.

O. **“Tax Administration Division”** means the Pueblo’s Tax Administration Division established pursuant to Ordinance 86-55 (as amended).

P. **“Taxpayer”** means a person who pays the Cigarette Tax, or who is subject to and liable for the collection and payment of the Cigarette Tax.

Q. **“Tobacco Products”** means any product, other than cigarettes, made from or containing tobacco.

R. **“Tobacco Product Compliance Directory”** means the directory compiled and maintained by the New Mexico Attorney General’s Office that lists the brand names and families of tobacco products that are compliant or non-compliant with the Tobacco Model Escrow Statute, NMSA §6-4-12 and §6-4-13, and the Tobacco Escrow Fund Act, NMSA §6-4-14 through §6-4-24.

S. **“Traditional Tobacco”** means twist or leaf tobacco traditionally used by Tribal members or other Native American individuals.

T. **“Tribal Member”** means any individual who is an enrolled member of the Pueblo of Isleta.

U. **“Tribal Court”** means the Tribal Court of the Pueblo of Isleta.

V. **“Tribal Council”** means the Tribal Council of the Pueblo of Isleta.

### **Section 6.03. Cigarette Tax**

A. **Tax Imposed; Taxable Event.** For the privilege of selling cigarettes on Pueblo Lands, there is hereby levied and imposed the following tax upon every Retailer or Distributor of cigarettes:

\$0.75 per carton of cigarette packs or packages received by the Retailer or Distributor on Pueblo Lands.

B. **Review of Rate.** The Tribal Council shall review the tax rate annually each April, or at such other times as deemed necessary, to determine if the rate shall be adjusted.

C. **Incidence of Tax.** The legal incidence of the tax imposed by this Chapter shall be on Retailers and Distributors selling or distributing cigarettes on Pueblo Lands.

D. **Liability for Collection and Payment of Tax.** Retailers and Distributors within Pueblo Lands are responsible for the collection and payment of the tax imposed by this Chapter, regardless of whether the taxes are passed on to the next purchaser in the cost of the product.

E. **Exemption for Sales Off-Pueblo Lands by Distributors.** Cigarettes that are received by Distributors within Pueblo Lands but are then sold to other vendors off of Pueblo Lands are exempt from the tax. Distributors may deduct from his or her return those cigarettes sold to off-reservation vendors. Distributors are still required to pay tax on those cigarettes that are received on Pueblo Lands and are sold to other Isleta vendors located within Pueblo Lands.

F. **Tribal Tax Previously Paid on Product.** A Retailer or Distributor may deduct from his or her return those cigarettes upon which the Cigarette Tax has been reported and paid pursuant to this Chapter by the Distributor on Pueblo Lands from whom they purchased the cigarettes.

G. **Exemption from Tribal Sales Tax.** Cigarettes upon which the Cigarette Tax has been imposed and collected pursuant to this Chapter shall be exempt from the Pueblo of Isleta Enterprise Sales Tax.

H. **Traditional Tobacco Exempt.** Nothing in this Chapter shall be construed as regulating or taxing in any way the use, consumption, sale, or giving away of traditional tobacco on or from the Pueblo Lands.

#### **Section 6.04. Reporting and Payment of Tax**

All taxes imposed by this Chapter are due and payable on or before the fifteenth (15<sup>th</sup>) business day of the calendar month immediately following the month in which the cigarette taxes accrue. Every person subject to the Cigarette Tax shall complete and file with the Tax Administration Division a return for the preceding tax month on a form provided by the Tax Administration Division providing such information as required. The return shall be accompanied by a payment of the amount of the Cigarette Tax due. The return shall be signed by the Taxpayer or an authorized agent of the Taxpayer.

#### **Section 6.05. Retention of Invoices and Records**

A. **Record of Receipt of Cigarettes.** Every Retailer and Distributor within Pueblo Lands who is subject to the Cigarette Tax shall maintain copies of all invoices or other documents from the seller with respect to receipt of cigarettes on Pueblo Lands by such Retailer or Distributor. The invoices or documents shall indicate date of purchase, the quantity of cigarettes purchased, the price paid and the name and address of the seller.

B. **Record of Sale of Cigarettes.** Every Distributor who sells cigarettes on or from Pueblo Lands for resale shall maintain copies of all invoices and records showing such person's sales. The invoices shall indicate the date of sale, the quantity of cigarettes, the price paid, and the name and address of the buyer.

C. **Taxpayer Records.** Every Taxpayer shall maintain accurate and complete records relevant to reporting and payment of cigarette taxes.

D. **Maintaining Records.** Such invoices and records shall be maintained for a period of not less than three (3) years from each receipt and/or sales transaction or tax payment.

## **Section 6.06. Business Permit Requirements**

A. **Generally.** Every person who receives or sells cigarettes or tobacco products in any quantity on or from Pueblo Lands must hold a valid Business Permit issued by the Pueblo for each business location on Pueblo Lands where cigarettes or tobacco products are received or sold.

(1) The Pueblo's grant of a Business Permit to engage in the business of selling cigarettes or tobacco products on or from Pueblo Lands conveys upon the Permittee an exemption from the imposition of the State of New Mexico Cigarette Tax on such sales transactions. *See*, NMSA §7-12-4.

B. **No Exemptions for Certain Businesses.** All businesses that sell any quantity of cigarettes or tobacco products must apply for a Business Permit, and pay the fee, even if the primary purpose of the business is not cigarette or tobacco products sales, and would otherwise be exempt from the Business Permit fee based on the category of business such as Indian arts and crafts, agriculture, or food sales.

C. **Application and Fees.** An applicant for a Business Permit shall apply in writing on a form provided by the Pueblo setting forth such information as required and pay such fees in accordance with the Pueblo of Isleta Business Permit Policy or such other regulations or policies as may be adopted.

D. **Delinquent Taxes.** No Business Permit shall be issued or renewed if the applicant owes delinquent cigarette taxes until such taxes are paid in full.

E. **Non-Transferable and Location Specific.** A Business Permit issued to a person subject to this Chapter shall not be transferred, sold or assigned except in accordance with the Business Permit Policy or other regulations or policies and is only valid for the business location specified in the application and on the Business Permit itself.

F. **Requirements.** All persons issued a Business Permit who are subject to this Chapter shall:

(1) conspicuously display the license in the business location;

(2) be responsible for the entire operation of selling cigarettes and tobacco products on or from Pueblo Lands, the reporting and payment of all cigarette taxes and permit fees, and for the conduct of his or her officers, agents, and employees in relation thereto;

(3) not expand their business operation pertaining to cigarette and tobacco product sales beyond what was described in their application and upon which the permit was issued.



(4) comply with all laws and regulations of the Pueblo, including the Pueblo of Isleta Business Permit Policy, and applicable federal laws and regulations regarding the sale and distribution of cigarettes and tobacco products.

i. It is the responsibility of the Permittee to review the Tobacco Product Compliance Directory to determine which cigarette and tobacco products are compliant and are acceptable to be sold on or from Pueblo Lands pursuant to this Chapter.

(5) expressly consent to the civil jurisdiction of the Tribal Court for any matter arising pursuant to this Chapter, the Business Permit Policy or other applicable law or regulation.

**G. Revocation of Permit.** In addition to any enforcement action against a Business Permit holder pursuant to the Pueblo of Isleta Business Permit Policy and such other civil or criminal penalties imposed pursuant to this Chapter consistent with federal law, the Tax Administration Division may take such action to cause the revocation of a Business Permit for:

(1) any material misstatement of facts in the Business Permit application regarding the sale or distribution of cigarettes or tobacco products on or from Pueblo Lands;

(2) any material misstatement of facts in a record, report, inventory, invoice, or other document required to be kept and/or filed with the Tax Administration Division by this Chapter;

(3) any violation of this Chapter or any regulation promulgated hereunder, or any order issued pursuant to this Chapter, including the non-payment or continued delinquent payment of taxes on more than one occasion;

(4) any violation of any applicable federal or Pueblo law or regulation.

**H. Notice of Permittee's Revocation.** Upon any such revocation, the Tax Administration Division shall notify the New Mexico Taxation and Revenue Department and all suppliers known to provide cigarettes to Retailers and Distributors on Pueblo Lands that the person whose Business Permit is revoked is no longer tribally licensed and authorized to purchase cigarettes without payment of the State of New Mexico Cigarette Tax.

**I. Additional Restrictions or Limited Number of Permits.** The Tribal Council reserves the right to impose additional restrictions on existing Business Permits or limit the number of Business Permits issued for sale or distribution of cigarettes or tobacco products under this Chapter when, in the Tribal Council's discretion, it is in the public's interest or welfare.

**J. Other Licenses or Permits.** The Tribal Council reserves the right to require a separate license or permit for the sale or distribution of cigarettes or tobacco products, in lieu of or in addition to, the Business Permit described herein.

## **Section 6.07. Prohibited Activities**

It shall be a civil offense for any Person subject to this Chapter to:

- A. sell cigarettes or tobacco products in any quantity on or from Pueblo Lands without holding a valid Business Permit or other license that may be required by the Pueblo;
- B. sell cigarettes or tobacco products on or from Pueblo Lands at a location not authorized by the Business Permit;
- C. sell cigarettes or tobacco products on or from Pueblo Lands in any manner not authorized by the Business Permit, such as, but not limited to, expansion of the business operation or change in business structure, without proper notice to the Pueblo;
- D. sell cigarettes or tobacco products on or from Pueblo Lands to a minor;
- E. sell or distribute cigarettes or tobacco products on or from Pueblo Lands that are listed as non-compliant or contraband on the Tobacco Product Compliance Directory maintained by the State of New Mexico Attorney General's Office;
- F. fail to report, report accurately and/or timely pay the Cigarette Tax;
- G. fail to report delivery, distribution or sales of cigarettes on or from Pueblo Lands;
- H. fail to retain invoices and records required by this Chapter;
- I. fail to cooperate with the Tax Administration Division, or its agent, in its conduct of its duties under this Chapter;
- J. violate this Chapter and any regulations adopted hereunder.

## **Section 6.08. Audit Authority**

The Tax Administration Division, through its designated agent, shall be authorized and empowered to:

- A. enter onto the business premises of any Permittee to conduct an inventory of any stock of cigarettes in the possession of the Permittee at any time during business hours of such Permittee with prior notice;
- B. conduct audits of, and inspect, Permittee invoices and records regarding cigarette purchases and sales on or from Pueblo Lands, with prior written notice;
- C. contact any cigarette or tobacco products supplier or distributor to verify quantities of cigarettes sold and delivered to any Permittee;

D. issue administrative subpoenas for any records, information, or testimony necessary or appropriate to determine compliance of any person with the terms of this Chapter;

E. stop and inspect on Pueblo Lands any delivery vehicle of a cigarette delivery agent, permittee or supplier to determine compliance with this Chapter.

#### **Section 6.09. Civil Enforcement Authority**

A. **Seizure and Sale of Products.** Any person found selling cigarettes or tobacco products on Pueblo Lands without a valid Business Permit shall be subject to confiscation of all cigarettes and/or tobacco products found in his or her possession or custody. The Tax Administration Division shall seize and sell all such cigarettes and tobacco products, collecting the Cigarette Tax due, plus fifty percent (50%) from the proceeds thereof as a civil penalty.

B. **Assessments.** The Tax Administration Division may assess against any person owing taxes under this Chapter:

- (1) the amount of tax underpaid or owed;
- (2) a fee equal to twenty-five percent (25%) of the amount not paid;
- (3) interest of one-percent (1%) per month on late payment from the date due until paid.

C. **Civil Fine.** The Tax Administration Division may impose a civil fine in an amount not to exceed Five Hundred Dollars (\$500.00) on a Permittee for the commission of each prohibited act.

D. **Other Penalties and Remedies.** The Tax Administration Division may also impose any other penalties and exercise any other rights and remedies prescribed by this Chapter.

E. **Civil Proceedings.** The Tax Administration Division may enforce the provisions of this Chapter by injunction or otherwise in any civil proceeding maintained in the name of the Pueblo.

F. **Appeal to Tribal Court; Injunctive Relief.** Any action taken by the Tax Administration Division pursuant to Section 6.9 may be appealed to the Tribal Court. The Tribal Court may provide injunctive relief to the appealing party and/or to the Tax Administration Division pending decision on such appeal as the Tribal Court determines best preserves the rights of the parties and limits any potential violation of law.

## **Section 6.10. Criminal Penalty**

Any Indian within the jurisdiction of the Tribal Court who is found by the Tribal Court to have knowingly and intentionally sought to evade taxes imposed by this Chapter, or to assist another to evade such taxes, may be punished by a fine not to exceed Five Hundred Dollars (\$500.00) and/or imprisonment for up to ninety (90) days. The Tax Administration Division may bring and prosecute charges of tax evasion in Tribal Court against any person within the Tribal Court's criminal jurisdiction.

## **Section 6.11. Use of Funds**

Taxes, interest and penalties collected by and deposited with the Tax Administration Division pursuant to this Chapter. Such revenues shall first be applied to the costs of administration of the taxes under this Chapter. All revenues received in excess of the administration costs shall be allocated by the Tribal Council, in its discretion, for health, education, the community welfare, and essential governmental purposes, including but not limited to, the payment of debt obligations incurred by the Pueblo in these areas.

## **Section 6.12. Miscellaneous**

A. **Regulations.** The Tax Administration Division may promulgate regulations necessary to implement the requirements of this Chapter.

B. **Amendment.** This Chapter may be amended by the Tribal Council, subject to all necessary approval requirements. Future amendments of the tax rate in Section 6.03.A. shall not require Secretarial review or approval after this Chapter has been initially approved by the Secretary of the Interior, if the tax rate is the only item being amended.

C. **Sovereign Immunity.** The Pueblo hereby waives the sovereign immunity of the Tax Administration Division for the express, sole and limited purpose of allowing review of actions and decisions of the Tax Administration Division as provided by this Chapter, provided that such waiver is made only to the extent necessary to subject the Tax Administration Division to suit for the sole purpose of declaring and adjudging rights and obligations under this Chapter and any promulgated regulations and does not waive immunity with respect to suits for monetary damages.

D. **No Adoption of State Law.** While this Chapter references certain New Mexico State laws, tax rates or documents, that reference does not adopt or extend New Mexico law or policy within the Pueblo Lands or over the Pueblo or its members and in no way alters any sovereign rights, powers or jurisdiction of the Pueblo of Isleta.