

**PUEBLO OF ISLETA**  
**POSSESSORY INTEREST TAX**

ORDINANCE No. 86-55

WHEREAS, the Pueblo of Isleta is an Indian Tribe recognized by the United States of America organized under the Indian Reorganization Act of 1934 pursuant to a revised Constitution effective February 23, 1970 exercising all inherent governmental powers and Tribal sovereignty; and

WHEREAS, an exercise of such inherent governmental power and Tribal sovereignty is the taxation of possessory interests within the reservation boundaries which is authorized by Article V, section 2(f) of the Constitution of the Pueblo of Isleta; and

WHEREAS, the Tribal Council recognizes a need to raise revenues to continue providing Tribal services within the reservation boundaries which benefit all individuals and businesses on the reservation; and

WHEREAS, a possessory interest tax with revenues dedicated to offset Pueblo governmental budgetary expenditures appears to be the most equitable form of raising revenues for governmental services to residents and businesses on the reservation; and

WHEREAS, a tax study commissioned by the Pueblo indicates that a reasonable percentage tax on the assessed value of said possessory interests would generate the revenues needed by the Pueblo and still not have substantial impact on the businesses owning said possessory interests; and

WHEREAS, it appears that the service lines of utilities providing services to residents and businesses on the reservation and commercial leases should be exempt from taxation; and

WHEREAS, the Supreme Court of the United States has specifically upheld the sovereign authority of Indian tribes to levy and collect taxes on businesses within the reservation boundaries and has indicated that the Department of the Interior approval of said tax ordinances is unnecessary unless the internal laws of the Tribe require such approval.

NOW, THEREFORE, BE IT ORDAINED by the Tribal Council of the Pueblo of Isleta, pursuant to Article 5, Sections 2(e) and 2(f) of the Constitution for the Pueblo of Isleta, that effective on the date set forth hereinafter, a possessory interest tax is hereby imposed on all possessory interests within the reservation boundaries as follows:

**Section 1. TAX ADMINISTRATION DIVISION.**

A Tax Administration Division of the Pueblo of Isleta is hereby established to administer this Ordinance and to keep all records and accounts concerning this tax. The Tribal Council of the Pueblo shall from time to time designate an individual to be Director of said Tax Administration Division. Any inquiries concerning said tax shall be made through the Tax Administration Division of the Pueblo.

**Section 2. DEFINITIONS.**

Unless the context otherwise requires in this Ordinance, the following definitions shall apply:

(a) Commercial Business Lease.

"Commercial Business Lease" shall mean any lease or permit entered into by the Pueblo or the Bureau of Indian Affairs on behalf of the Pueblo on all Tribal lands for the purpose of engaging in trade or commerce, except for a right-of-way, compressor site lease or other similar lease, permit, or easement issued by the Pueblo or Bureau of Indian Affairs on behalf of the Pueblo.

(b) Court of Tax Appeals.

Court of Tax Appeals shall mean the Court of Tax Appeals established pursuant to the terms of this Ordinance.

(c) Governor.

"Governor" shall mean the Governor of the Pueblo of Isleta.

(d) Isleta Indian Reservation.

"Isleta Indian Reservation" shall mean all lands subject to the jurisdiction of the Pueblo of Isleta and includes lands owned in fee by the Pueblo or lands the equitable title to which is vested in the Pueblo.

(e) Possessory Interest.

"Possessory Interest" shall mean any non-exempt interest in real property obtained under a lease, permit, easement or right-of-way granted by the Pueblo or issued by the BIA on behalf of the Pueblo of Isleta including the value of any property located on said lease, permit, easement or right-of-way.

(f) Pueblo.

"Pueblo" shall mean the Pueblo of Isleta.

(g) Taxable Person.

"Taxable Person" shall mean any person or entity, including any individual, partnership, corporation or other legal entity, having ownership rights in any possessory interest within the Isleta Indian Reservation.

(h) Tribal Council.

"Tribal Council" shall mean the duly elected and appointed Tribal Council of the Pueblo of Isleta as provided in the Constitution of the Pueblo of Isleta.

(i) Tribal Court.

"Tribal Court" shall mean the Tribal Court of the Pueblo of Isleta and does not include the Court of Tax Appeals.

**Section 3. RATE OF TAX.**

The Possessory Interest Tax set forth herein shall be assessed at the rate of five percent (5%) of the value of a taxpayer's possessory interests as determined and computed in accordance with this Ordinance. Said rate of tax shall be and remain the same as herein established unless modified by an ordinance of the Tribal Council of the Pueblo.

**Section 4. COMPUTATION OF VALUE OF POSSESSORY INTEREST.**

The value of a possessory interest shall be computed as provided in this section or by any other method adopted by the Tax Administration Division of the Pueblo which accurately reflects the fair market value of the possessory interest which is subject to taxation.

(a) Date of Valuation.

All property that is subject to valuation under this Ordinance for all or any part of any tax year, shall be valued as of October 1st of each year on which tax assessments for the following year shall be made.

(b) Method of Valuation.

The value of a possessory interest shall be computed in accordance with the appropriate special method of valuation authorized and utilized by the State of New Mexico in the New Property Tax Code, as amended, currently Section 7-36-1 to 33, NMSA 1978 and regulations adopted pursuant thereto.

**Section 5. REPORTING REQUIREMENTS.**

Each owner of a possessory interest shall comply with the following reporting requirements and such other requirements as are by rule or regulation adopted by the Tax Administration Division of the Pueblo:

(a) Forms.

The Tax Administration Division shall provide forms for the reporting on all possessory interests which must be used in reporting to the Pueblo for determination of the valuation of said possessory interests and assessment of tax due.

(b) Reporting Date.

Each taxpayer shall report the value of its possessory interests by November 15th of each year and notice of taxation, tax assessment and tax due shall be mailed by the Tax Administration Division by December 1st of each year which shall be paid within thirty (30) days of the date of said notice, unless another date is specified by the Tax Administration Division. Taxes shall be due in advance based on the assessed valuation; except that taxes for the last quarter of 1986 shall be due January 1, 1987 on the basis of the valuation submitted by November 15, 1986.

(c) Administrative Reports.

The Tax Administration Division shall report all activities and collections to the Governor of the Pueblo and the Tribal Council at least annually.

**Section 6. EFFECTIVE DATE.**

The effective date of this tax ordinance shall be December 1, 1986, with taxes after the last quarter of 1986 being levied on an annual assessed valuation of possessory interests with the initial full tax year being January 1, 1987 through December 31, 1987.

**Section 7. PAYMENT OF TAXES DUE.**

Any taxes assessed shall be paid to the Treasurer of the Pueblo of Isleta with reports being filed with the Tax Administration Division, as set forth herein. Payment will be considered to have been timely paid if it is postmarked before midnight on the date on which it is due or if it is delivered to the Office of the Treasurer of the Pueblo of Isleta by certified mail or in person and a receipt is given before the due date.

**Section 8. TAX DECLARATION.**

Every nonexempt taxable entity or person within the reservation boundaries shall designate some natural person as its individual empowered by the taxable entity to serve on behalf of the taxable person with respect to all matters involving this tax on the form distributed by the Tax Administration Division and provide the information required therein.

**Section 9. PENALTY FOR LATE PAYMENT.**

Any taxable entity or person failing to pay the amount of tax assessed by the due date shall pay penalty on the outstanding balance in the amount of two percent (2%) per month of delay in making payment.

**Section 10. EXEMPTIONS.**

1. No possessory interest which consists of a service line of a utility which exclusively serves the Isleta Reservation or a delivery or distribution facility of a utility which exclusively serves the Isleta Reservation shall be subject to this tax.

2. No possessory interest under a commercial business lease or permit within the reservation boundaries shall be subject to this tax.

**Section 11. METHOD OF CLAIMING EXEMPTION.**

A claim for exemption from taxation of a service line of a utility, or a delivery or distribution facility or line of a utility exclusively serving the Isleta Reservation shall be made at the time of the filing of valuation information with the Tax Administration Division and shall be accompanied by a map indicating the utility distribution facility or line which exclusively services residences or businesses located within the reservation boundaries, for which exemption is claimed.

**Section 12. COURT OF TAX APPEALS.**

A Court of Tax Appeals of the Pueblo of Isleta is hereby established pursuant to Article 9, Section 6 of the Constitution for the Pueblo of Isleta. The Court of Tax Appeals shall hear appeals from any final decision of the Tribal Court concerning the protests pursuant to this Possessory Interest Tax Ordinance. The Tribal Council shall from time to time as the need arises designate three individuals to sit as a panel of judges on said Court of Tax Appeals. The Court of Tax Appeals shall have the authority to adopt rules for the conduct of hearings and internal procedures, including selection of a presiding judge from each panel appointed.

**Section 13. APPEAL PROCEDURES FOR PROTESTED TAXES.**

Any taxpayer may pay its tax under protest by filing a Notice of Protest with the Tax Administration Division of the Pueblo of Isleta at the time of payment, which shall be handled as follows:

(a) Any protest received shall be referred to a three-member Tax Protest Board to be appointed by the Tribal Council pursuant to Article 5, Section 2(j) of the Constitution for the Pueblo of Isleta. The Tax Protest Board shall make a determination as to whether or not the protested tax shall be refunded and shall report its decision in writing to the protesting party, the Governor, the Treasurer and the Tax Administration Division of the Pueblo within five (5) working days of the date of determination of said protest. The Tax Protest Board may seek any additional information or hold such hearings or meetings as it determines are necessary in such a manner (either formal or informal) as it determines is necessary. Additionally, said Tax Protest Board may issue rules and regulations for the conduct of tax protest hearings. The decision of the Tax Protest Board shall be final unless appealed to the Tribal Court in accordance with the provisions of this Ordinance.

(b) Appeal from a determination of the Tax Protest Board may be made to the Tribal Court, as defined herein, of the Pueblo by filing a Notice of Appeal with

the Clerk of the Tribal Court with copies to the Governor of the Pueblo, to the Tax Administration Division and the Tax Protest Board within fifteen (15) days of the date of the decision of the Tax Protest Board. Upon receipt of an appeal from the Tax Protest Board, the Court Clerk shall schedule a hearing before the Tribal Court at which time the protesting taxpayer shall be allowed to state the basis for the protest and be represented by counsel, at his own expense. The decision of the Tribal Court as to whether or not a protest shall be allowed shall be made in writing, and distributed to the protesting taxpayer or his counsel, the Tax Administration Division, the Treasurer of the Pueblo, the Governor and the Tax Protest Board within five (5) working days of the date of the decision. The decision of the Tribal Court shall be final unless appealed to the Court of Tax Appeals as provided for herein.

(c) Appeals from the determination of the Tribal Court may be made to the Court of Tax Appeals as defined herein of the Pueblo by filing a Notice of Appeal with the clerk of the Tribal Court with copies to the Governor of the Pueblo, to the Tax Administration Division and to the Tax Protest Board within fifteen (15) days of the date of the decision of the Tribal Court. Upon receipt of an Appeal from the Tribal Court, the designated Board shall establish a briefing schedule and thereafter schedule a hearing at which time the protesting taxpayer shall be allowed oral arguments and may be represented by counsel at his own expense. The Court of Tax Appeals may also request briefs and arguments from the Tax Protest Board or its counsel. The decision of the Court of Tax Appeals as to whether or not a protest shall be allowed shall be made in writing, and distributed to the protesting taxpayer or his counsel, the Tax Administration Division, the Treasurer of the Pueblo, the Governor, the Tax Protest Board and the Tribal Court in five (5) working days of the date of the written decision. The decision of the Court of Tax Appeals shall be final.

(d) No protest shall be heard unless the assessed taxes have first been paid by the taxpayer to the Treasurer of the Pueblo. The Treasurer shall hold any contested amounts without expenditure in an interest bearing account, if possible, until a determination is made on the protest filed.

(e) If any tax is found to be erroneously or illegally collected, interest at the rate of four percent (4%) per annum shall be allowed on the amount erroneously or illegally collected.

(f) The taxpayer has the burden of proof to establish that the protested tax was erroneously or illegally collected.

### Section 13. EXTENSION OF TIME FOR PAYING TAX.

Upon the filing with the Tax Administration Division of a timely request for an extension of time within which to pay assessed taxes, and upon a showing of good cause, the Tax Administration Division may extend, for a period not to exceed sixty (60) days, the due date for taxes assessed, but no further extension shall be allowed. Such a request for extension to be timely must be filed on or before the date the assessed taxes are due. The penalty for late payment as provided for in Section 9 of this Ordinance shall apply to any payment for which an extension has been granted as well as other late payments.

**Section 14. COLLECTION POWERS.**

The Tax Administration Division, in the name of the Pueblo, shall have full power to collect taxes and penalties assessed, including the power to file suit in Tribal, State or Federal Court, and to execute on any judgment including attachment and seizure of the assets of any taxpayer.

**Section 15. NO WAIVER OF SOVEREIGN IMMUNITY.**

The Pueblo of Isleta does not in any way waive its sovereign immunity from suit to contest the validity of this Ordinance. The determination to refund all or part of a protested tax payment shall be made in accordance with with terms of this Ordinance. Any decision of the Court of Tax Appeals on a protested tax payment or protested assessment made in accordance with Section 12 hereof shall be final.

**Section 16. SEVERABILITY.**

If any part or application of this Ordinance is held invalid, the remainder of the Ordinance or its application to other situations or persons shall not be affected.

**Section 17. USE OF TAX PROCEEDS.**

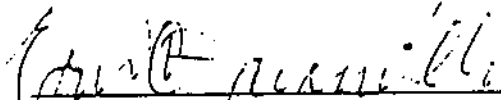
All monies received shall be deposited by the Treasurer of the Pueblo in the general fund to be budgeted by the Tribal Council and expended to defray the costs of providing governmental services. The Treasurer of the Pueblo may execute vouchers against this fund to make refund adjustments, payments of interest or payments for any purpose for which this Ordinance may require. The Treasurer shall refund any taxes paid on which protests have been allowed, with interest as allowed by this Ordinance within thirty (30) days of the date of final decision.


**Section 18. AMENDMENT.**

This Ordinance may be amended by a majority vote of the Tribal Council. The Tax Administration Division shall notify taxpayers of any amendment.

**CERTIFICATION**

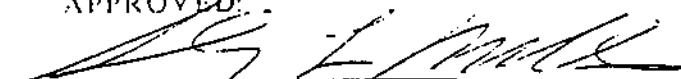
I, the undersigned, as Governor of the Pueblo of Isleta, do hereby certify that the foregoing ordinance was passed at a duly called meeting of the Tribal Council of the Pueblo of Isleta, held on the 1st day of December, 1986, at which a quorum was present, with 9 voting for and 0 opposing said ordinance.


  
President

  
Governor

APPROVED:

ATTEST:

  
Secretary of the Interior

  
Secretary

**SECTION C**

**PUEBLO OF ISLETA POSSESSORY INTEREST TAX**

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