

POTAWATOMI LAW AND ORDER CODE

TITLE 10
GENERAL REVENUE AND TAXATION

CHAPTER 10-1 1
PRAIRIE BAND POTAWATOMI TAX COMMISSION 1
DESIGNATED AS TAXING AUTHORITY 1
Section 10-1-1. Purpose..... 1
Section 10-1-2. Taxing Powers Vested in Tax Commission..... 1
Section 10-1-3. Seal..... 1
Section 10-1-4. General Taxing Powers of the Tax Commission. 2
Section 10-1-5. Rulemaking Authority..... 2
Section 10-1-6. Forms..... 3
Section 10-1-7. Tax Stamps and Licenses. 3
Section 10-1-8. Bookkeeping. 4
Section 10-1-9. Tax Commission Employees and Expenses..... 4
Section 10-1-10. Bonds..... 4
Section 10-1-11. Records..... 5
Section 10-1-12. Treasury Account—Deposits. 5
Section 10-1-13. Collection of Taxes. 5
Section 10-1-14. Other Remedies. 6
Section 10-1-15. Inventory of Seized Property. 6
Section 10-1-16. Public Sale of Forfeited Property..... 6
Section 10-1-17. Exempt Property..... 7
Section 10-1-18. Administrative Appeals..... 8
Section 10-1-19. Limitations on Administrative Appeals. 8
Section 10-1-20. Reserved..... 8
Section 10-1-21. Appeals; Suits Against the Tax Commission..... 8
Section 10-1-22. Taxes Erroneously Paid..... 9
Section 10-1-23. Refunds to Taxpayers..... 9
Section 10-1-24. Forgery of Stamps, Etc..... 9
Section 10-1-25. Offenses..... 9
Section 10-1-26. Banishment..... 10
Section 10-1-27. Cancellation of Leases upon Banishment. 10
Section 10-1-28. Interest..... 10
Section 10-1-29. Penalty..... 10
CHAPTER 10-2 11
TRIBAL TOBACCO TAX 11
Section 10-2.1 Purpose..... 11
Section 10-2-2. Definitions..... 11
Section 10-2-3. Taxes Levied. 12
Section 10-2-4. Wholesale Exceptions. 12
Section 10-2-5. Impact of tax. 12
Section 10-2-6. Payment of tax..... 12
Section 10-2-7. Exclusions from Taxation. 12

Section 10-2-8.	Unstamped Tobacco Contraband.	13
Section 10-2-9.	Records.....	13
Section 10-2-10.	Reports.	13
Section 10-2-11.	Wholesale and Retail Stock to be Separate.....	14
Section 10-2-12.	Tribal Tobacco Wholesaler Licensing.	14
Section 10-2-13.	Tribal Tobacco Wholesaler License.....	14
Section 10-2-14.	Tribal Tobacco Retailer Licensing.....	14
Section 10-2-15.	Tribal Tobacco Retailer License.	14
Section 10-2-16.	Failure to comply with licensing requirements; penalty.	15
Section 10-2-17.	Effective Date.....	15
CHAPTER 10-3	.....	15
SALES TAX	.....	15
Section 10-3-1.	Definitions.....	15
Section 10-3-2.	Tax on Sales.	16
Section 10-3-3.	Reserved.	16
Section 10-3-4.	Impact of Tax.	16
Section 10-3-5.	Payment of Tax.	17
Section 10-3-6.	Records.....	17
Section 10-3-7.	Sales by Retailers to the Nation and its Members.	17
CHAPTER 10-4	.....	18
EARNINGS TAX	.....	18
Section 10-4.	Reserved. (Amended by PBP TC No. 2012-032, February 13, 2012 ...	18
CHAPTER 10-5	.....	18
ECONOMIC DEVELOPMENT TAX	.....	18
Section 10-5.	Reserved. (Amended by PBP TC No. 2012-032, February 13, 2012)...	18
CHAPTER 10-6	.....	18
MOTOR FUEL TAX	.....	18
Section 10-6.	Reserved. (Amended by PBP TC No. 2007-027, February 2, 2007).....	18
CHAPTER 10-7	.....	18
FRANCHISE TAX	.....	18
Section 10-7.	Reserved (Amended by PBP TC No. 2010-111, May 20, 2010.).....	18

POTAWATOMI LAW AND ORDER CODE

**TITLE 10
GENERAL REVENUE AND TAXATION**

**CHAPTER 10-1
PRAIRIE BAND 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.

(A) The Prairie Band 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.

(B) The Prairie Band Potawatomi Tax Commission shall consist of three (3) members, who shall be appointed by the Tribal Council. The term of each Commission member shall be for a period of four (4) years; provided however that the term of any Commission member who is also a Tribal Council member shall expire if such Commission member's Tribal Council term expires.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-1-3. Seal.

The Prairie Band Potawatomi Tax Commission is authorized and 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. 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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-1-5. Rulemaking Authority.

(A) The Tax Commission shall prescribe, promulgate, and enforce written rules and regulations not inconsistent with this Title to provide for its internal operational procedures; and shall have the authority 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 or 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 Commission and the official seal of the Tax Commission shall have been approved by Tribal Council and 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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

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)** Wording which indicates the type of tax imposed.
- (3)** 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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

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 may appoint a Tax Director to administer the Tribal Tax Department and carry out the functions of the Tax Commission. The Tax Director may be a member of the Tax Commission. The Tax Director may receive payment for services rendered but need not be a full time employee of the Tribe.

(C) 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. 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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

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 Commission 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 Prairie Band Potawatomi Nation Tribal Government 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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

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

(A) There is hereby authorized and directed to be established an account in a 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 cause such sales to be conducted at such times as it deems sufficient property has accumulated to make such sale profitable.

(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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

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, or who has had a license denied, revoked or suspended pursuant to any provision of this Code, 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 or a licensed was improperly denied, revoked or suspended. Such request must be filed within 30 days of the date of mailing of the Commission's notice of assessment or action, or when applicable, within two years of the date of payment. The Tax Commission or a person designated by the Commission 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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

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

Any appeal as provided for in Section 10-1-18 shall be commenced 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) 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.

(B) Notwithstanding subsection (A), 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 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; amended by PBP TC No. 2012-032, February 13, 2012,)

Section 10-1-22. Taxes Erroneously Paid.

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 may appeal the determination of the Commission to the Tribal Court.

(Amended by PBP TC No. 2012-032, February 13, 2012)

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 cause such refund to be paid to the taxpayer within a reasonable amount of time, not to exceed thirty (30) days from the date of administrative or Court order.

(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.

(Amended by PBP TC No. 92-66, November 18, 1992; amended by PBP TC No. 2000-82, May 2, 2000; amended by PBP TC No. 2012-032, February 13, 2012.)

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 herein. Each such counterfeited, embezzled, stolen, converted, misapplied or forged stamp or other instrument shall constitute a separate violation.

(Amended by PBP TC No. 2012-032, February 13, 2012)

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 banishment 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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

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 reasonable 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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

CHAPTER 10-2
TRIBAL TOBACCO TAX

Section 10-2.1 Purpose.

The purpose of this Chapter is to regulate certain conduct and provide for the levy and collection of certain taxes for the benefit of the Nation. Such taxes shall serve to strengthen the tribal government by providing funds for tribal government operations and services.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-2. Definitions.

(A) **“Cigarette”** is defined as all rolled tobacco or any substitute therefore, wrapped in paper or any substitute therefore.

(B) **“Consumer”** is defined to mean and include any Person, Indian or non-Indian, who consensually purchases, receives or comes into possession of a Tribal Tobacco product from a Tribal Retailer located within the exterior boundaries of the Reservation.

(C) **“Person”** is defined to mean and include any individual, company, partnership, corporation, commission, government agency, joint venture, association, trust, or other political or identifiable entity to which this Code can be applied.

(D) **“Sale” or “Sales”** or their derivatives is defined to mean and include all sales, barter, trades, exchanges, or other transfers of ownership for value of Tribal Tobacco from a Tribal Retailer to any Consumer.

(E) **“Tribal Jurisdiction”** means the geographical areas within and without the exterior boundaries of the Prairie Band Potawatomi Nation Reservation that is subject to the jurisdiction and authority of the Nation, to the extent not prohibited by federal law and as further defined in Section 1-1-1.

(F) **“Tribal Retailer”** is defined to mean and include any Person in the ordinary course of business who sells any Tribal Tobacco product within the exterior boundaries of the Tribal Reservation to another Person.

(G) **“Tribal Tobacco Tax Stamp”** is defined as a tax stamp officially approved by the Tribe that is applied to all tribal tobacco intended for sale by a Tribal Retailer.

(H) **“Tribal Tobacco”** is defined as all Cigarettes sold by a Tribal Wholesaler to a Tribal Retailer that do not have another government jurisdiction’s tax stamp already affixed to the tobacco package. The definition of Tribal Tobacco does not include products sold by a Tribal Wholesaler to Persons, Consumers, retailers or other

wholesalers who intend to resell the product outside the exterior boundaries of the Reservation.

(I) “Tribal Wholesaler” is defined as a Person who in the ordinary course of business sells Tribal Tobacco products to Tribal Retailers or Persons intended for resale within the exterior boundaries of the Reservation or to other wholesalers who intend to resell the product outside the exterior boundaries of the Reservation.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-3. Taxes Levied.

Tribal Tobacco Sales. There is hereby levied upon the sale of Tribal Tobacco by a Tribal Retailer for Sales within the exterior boundaries of the Tribal Reservation, a tax equal to seventeen cents (\$0.17) per pack of cigarettes sold exclusive of any rebate. Such products are required to have the Tribal Tobacco Tax Stamp affixed to them.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-4. Wholesale Exceptions.

The tax imposed by Section 4 of this Chapter shall not apply to sales to Persons, customers, retailers or wholesalers who intend to sell the product outside the exterior boundaries of the Tribal Reservation.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-5. Impact of tax.

The impact of the tax levied imposed by Section 4 of this Chapter is declared to be on the Tribal Retailer.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-6. Payment of tax.

Every Tribal Retailer or Tribal Wholesaler is required to purchase all applicable tax stamps from the Nation or its designee. The Nation or its designee shall sell the applicable tax stamps to the Tribal Retailer or Tribal Wholesaler at the applicable rate described in Section 10-2-4.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-7. Exclusions from Taxation.

Notwithstanding the provisions of this Chapter 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 however, that if such tobacco is sold, such sale shall be prima facie evidence that the tobacco is not intended for religious or ceremonial use.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-8. Unstamped Tobacco Contraband.

Any unstamped Tribal Tobacco 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 used in their transportation, storage, consumption, or concealment are hereby declared to be contraband and subject to seizure, forfeiture and sale.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-9. Records.

The Tax Commission shall promulgate rules requiring that all Tribal Wholesalers and Tribal Retailers 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 Tribal Wholesaler or Tribal Retailer.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-10. Reports.

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

(Amended by PBP TC No. 2012-032, February 13, 2012; amended by PBP Resolution No. 2012-054, February 24, 2012.)

Section 10-2-11. Wholesale and Retail Stock to be Separate.

Every person who is both a Tribal Wholesaler and Tribal Retailer of Tribal 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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-12. Tribal Tobacco Wholesaler Licensing.

Every wholesaler of Tribal Tobacco doing business within the tribal jurisdiction must apply for and receive from the Tax Commission a “Tribal Tobacco Wholesaler License”. Forms for such application and license shall be provided by the Tax Commission. A Tribal Wholesaler shall only be permitted to sell Tribal Tobacco within the tribal jurisdiction to Tribal Retailers with a valid Tribal Tobacco Retailer license issued by the Nation.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-13. Tribal Tobacco Wholesaler License.

The Tribal 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 within the tribal jurisdiction 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 One Hundred Dollars (\$100.00) shall be paid for each new or renewal license issued.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-14. Tribal Tobacco Retailer Licensing.

Every retailer of Tribal Tobacco doing business within the tribal jurisdiction must apply for and receive from the Tax Commission a “Tribal Tobacco Retailer License”. Forms for such application and license shall be provided by the Tax Commission. A Tribal Retailer shall only be permitted to purchase Tribal Tobacco for resale within the tribal jurisdiction from Tribal Wholesalers who hold a valid Tribal Tobacco Wholesaler license issued by the Nation.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-15. Tribal Tobacco Retailer License.

The Tribal 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 One Hundred Dollars (\$100.00) shall be paid for each new or renewal license issued.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-16. Failure to comply with licensing requirements; penalty.

Any Tribal Wholesaler or Tribal Retailer who fails to comply with a licensing requirement as set forth in this Chapter may be subject to license suspension or revocation by the Tax Commission.

(Amended by PBP TC No. 2012-032, February 13, 2012)

Section 10-2-17. Effective Date.

This Article applies to all Sales of Tribal Tobacco effective as of March 30, 2012.

(Amended by PBP TC No. 2012-032, February 13, 2012)

**CHAPTER 10-3
SALES TAX**

Section 10-3-1. Definitions.

(A) **Consumer.** “Consumer” means any Person who consensually 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, corporation, commission, government agency, joint venture, association, trust, or other political or identifiable entity to which this Code 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” or their derivatives 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. For the Nation's gaming operations, "sale" or "sales" does not include property or services provided on a complementary basis without cash payment from the consumer to the retailer.

(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.

(Amended by PBP TC No. 2008-255, November 19, 2008; amended by PBP TC No. 2012-032, February 13, 2012.)

Section 10-3-2. Tax on Sales.

There is hereby levied upon the consensual sale and purchase 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. The following sales are exempt from tribal sales tax:

- (A)** Sales to the Nation tribal government.
- (B)** Sales made by small or home-based Retailers with annual sales of less than \$10,000 or with continuous operation of less than seven days in duration, including but not limited to vendors at powwows or similar cultural events, school concession stands, community-based fundraisers, and local food vendors.

(Amended by PBP TC No. 2012-032, February 13, 2012; amended by PBP Resolution No. 2012-054, February 24, 2012.)

Section 10-3-3. Reserved.

(Amended by PBP 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 who consensually makes a purchase of property and services within the Tribal jurisdiction 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.

(Amended by PBP TC No. 2012-032, February 13, 2012)

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 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 transaction occurring within the Reservation 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 Prairie Band Potawatomi Tax Commission 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 Commission may provide tribal and enrollment information to a retailer sufficient for the retailer to verify that transactions with the Nation or members of the Nation 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 may be adjudicated in tribal court. In the event of the unauthorized disclosure of such confidential information, the Tax Commission may impose a penalty of up to \$10,000 for each such disclosure.

(Amended by PBP TC No. 2006-098, May 18, 2006; amended by PBP TC No. 2012-032, February 13, 2012)

**CHAPTER 10-4
EARNINGS TAX**

Section 10-4. Reserved. (Amended by PBP TC No. 2012-032, February 13, 2012)

**CHAPTER 10-5
ECONOMIC DEVELOPMENT TAX**

Section 10-5. Reserved. (Amended by PBP TC No. 2012-032, February 13, 2012)

**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. Reserved (Amended by PBP TC No. 2010-111, May 20, 2010.)

(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; amended by PBP TC No. 2008-255, November 19, 2008; amended by PBP TC No. 2010-111, May 20, 2010; amended by PBP TC No. 2012-032, February 13, 2012; amended by PBP Resolution No. 2012-054, February 24, 2012.)