

TAXATION

CHAPTER 1. TAX ADMINISTRATION

Section 6-1-1. Title.

This chapter may be cited as the "Tax Administration Ordinance."

Section 6-1-2. Definitions.

For purposes of this title:

Authentic Pueblo arts and crafts means any product which is (a) handcrafted by a Pueblo of Laguna artist; (b) not made by machine or from unnatural products; and (c) sold by or on behalf of such artist.

Cigarette means

- (a) any roll of tobacco or any substitute for tobacco wrapped in paper or in any substance not containing tobacco;
- (b) any roll of tobacco that is wrapped in any substance containing tobacco, other than one hundred percent natural leaf tobacco, which, because of its appearance, the type of tobacco used in the filler, its packaging and labeling, or its marketing and advertising, is likely to be offered to, or purchased by, consumers as a cigarette, as described in part (a) of this definition;
- (c) bidis and kreteks; or
- (d) any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco, for making cigarettes ("roll-your-own" tobacco); 0.09 ounces of roll-your-own tobacco shall constitute one cigarette.

Commercial construction services means construction undertaken for a commercial or governmental entity.

Construction means:

- (a) the building, altering, repairing or demolishing in the ordinary course of business of any:

- (i) road, highway, bridge, parking area or related project;
 - (ii) building, stadium or other structure;
 - (iii) airport, subway or similar facility;
 - (iv) park, trail, athletic field, golf course or similar facility;
 - (v) dam, reservoir, canal, ditch or similar facility;
 - (vi) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;
 - (vii) sewerage, water, gas or other pipeline;
 - (viii) transmission line;
 - (ix) radio, television or other tower;
 - (x) water, oil or other storage tank;
 - (xi) shaft, tunnel or other mining appurtenance;
 - (xii) microwave station or similar facility;
 - (xiii) retaining wall, wall, fence, gate or similar structure; or
 - (xiv) similar work;
- (b) the leveling or clearing of land;
 - (c) the excavating of earth;
 - (d) the drilling of wells of any type, including seismograph shot holes or core drilling; or
 - (e) similar work; and
 - (f) includes Construction Material.

Construction material means tangible personal property that becomes or is intended to become an ingredient or component part of a construction project.

Day means calendar day.

Distributor for purposes of chapter 4 means a person who refines gasoline within the Reservation, or imports gasoline into the Reservation other than in the fuel supply tank of a motor vehicle for sale or use within the Reservation. The person who owns the gasoline at the time of refining or importation is the distributor. A person may be both a distributor and a retailer as to the same quantities of gasoline.

Division means the Tax Administration Division, the Director of the Division or an employee of the Division designated by the Director to exercise the powers of the Division under this Title.

Designated agent means the person who has been identified in writing to the Division as responsible for performing all the obligations of a taxpayer under this Title, including all obligations to provide information necessary to permit the accurate computation of all applicable taxes, provided that if the designated agent is not a natural person, it shall identify an individual officer, by name or position, to serve as the contact person for the Division and to sign and submit all required forms.

Director means the Director of the Taxation Administration Division.

Engaging in business means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit, and includes selling tangible personal property, leasing tangible personal property, and performing services, including without limitation, construction services and lodging services.

Gasoline means any flammable liquid hydrocarbon used primarily as fuel for the propulsion of motor vehicles, motorboats or aircraft, except for diesel engine fuel, kerosene, liquified petroleum gas, compressed or liquified natural gas, and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet-type engines.

Governor means the Governor of the Pueblo of Laguna.

Gross receipts means the total amount of money or the value of other consideration received from engaging in business within the Laguna Indian Reservation. Gross receipts includes receipts from (a) the sale of tangible property if the sale takes place within the Reservation, (b) the leasing of tangible personal property if the leased property is located within the Reservation, (c) the performance of services, including without limitation lodging services and construction, within the Reservation, and (d) admission to any place of recreation or entertainment. Gross receipts excludes cash discounts allowed and taken, and any gross receipts tax imposed by the state of New Mexico or its political subdivisions, provided that such entity provides for a reciprocal exclusion for gross receipts tax imposed by the Pueblo of Laguna.

Itinerant vendor means a vendor that does not have a fixed business or retail space, either on or off the Reservation and has sales of less than twenty thousand dollars (\$20,000.00) per year

(either on or off the Reservation). Itinerant vendor includes vendors licensed to operate booths or concessions at feast days.

Levy means the lawful power, hereby invested in the Division, to take into possession or to require the present or future surrender to the Division of any property or rights to property belonging to a delinquent taxpayer.

Lodging services means the business of furnishing rooms or other accommodations by a vendor to a customer who for a rent uses, possesses or has the right to use or possess any room or rooms or other units of accommodations in or at a hotel, apartment house, lodging house, motel, bed and breakfast, guest house, or other premises for lodging for a period of less than thirty (30) consecutive days.

New Mexico Tax Credit Stamp means the stamp issued by the New Mexico Taxation and Revenue Department for use by state-licensed cigarette distributors to indicate that the cigarette package bearing the stamp is to be or has been sold by a retailer located on land of a tribe that has imposed a qualifying tribal cigarette tax, as defined by § 7-12-2(K) NMSA 1978 as amended by Laws of New Mexico, 2010 2nd Special Session. Chapter 5.

Package of cigarettes means an individual pack, box or other container, but does not include a container that itself contains other containers, such as a carton of cigarettes.

Person means any natural person, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, or any entity, department, agency, instrumentality or political subdivision of tribal, federal or state government, and includes any business enterprise that is at least fifty-one (51) percent owned by the Pueblo of Laguna or another tribal, federal or state government.

Possessory interest means any nonexempt interest in real property within the Pueblo of Laguna Reservation, including, but not limited to:

- (a) interests held in fee simple;
- (b) interests held under lease or sublease;
- (c) interests held under an easement or right-of-way; and
- (d) interests held under a use or business agreement.

Pueblo means the Pueblo of Laguna.

Pueblo Council means the governing body of the Pueblo.

Pueblo Court means the trial court of the Pueblo of Laguna, and does not include the court

of appeals.

Pueblo of Laguna Reservation or Reservation means all lands subject to the jurisdiction of the Pueblo, including all land held by the United States in trust for the Pueblo and all lands within the exterior boundaries of the Pueblo of Laguna Reservation or Pueblo of Laguna Grant, regardless of whether the lands are owned in fee, held in trust by the United States for the Pueblo, or otherwise held.

Pueblo-owned business means a business or joint venture that is at least fifty-one (51) percent owned by the Pueblo of Laguna, including corporations chartered under tribal, federal or state law, unincorporated business enterprises, limited liability companies, partnerships, and all other forms of business organization.

Purchase price means the amount received by a vendor in cash, credit or other consideration for the sale or lease of tangible personal property, or for the performance of a service.

Retail means a sale to a customer not for resale.

Retailer for purposes of chapter 4 means a person who sells or gives away gasoline for any purpose other than resale and delivers the gasoline sold into fuel supply tanks of motor vehicles or into portable fuel storage containers. A person may be both a distributor and a retailer as to the same quantities of gasoline.

Tangible personal property means all goods, wares, merchandise, produce, commodities and all tangible things and substances which are capable of being possessed or exchanged, and includes construction materials, electricity, natural gas, propane, and water.

Tax means the total amount of each tax imposed and required to be paid under the provisions of any chapter in this title, and unless the context otherwise requires, includes the amount of any interest or civil penalty relating thereto.

Tax year means the calendar year during which a taxable transaction occurs.

Taxable transaction means the ownership of a property interest that is subject to tax under chapter 2, or a business transaction that is subject to tax under chapter 3, 4, 5 or 6.

Taxpayer or taxable entity means any person who owns a taxable property interest or engages in a taxable transaction on the Reservation and is responsible for paying to the Pueblo any tax imposed by any chapter in this title.

Vendor means any person receiving any payment or consideration subject to taxation under chapter 3.

Wholesaler for purposes of chapter 4 means any person other than a distributor who sells gasoline for resale.

Section 6-1-3. Applicability.

This chapter applies to and governs the administration and enforcement of all taxes imposed by this title, as amended from time to time.

Section 6-1-4. Authority of Division.

- A. In order to implement and enforce this title, a Tax Administration Division of the Pueblo of Laguna is hereby established to administer this title and to keep all records and accounts concerning Pueblo taxes. The Division is authorized to:
- (1) Inspect or audit the records and books of account of taxpayers and designated agents and examine property or other evidence at such times as the Division deems necessary for the effective execution of the Division's responsibilities under this title;
 - (2) Request and require taxpayers and designated agents to produce and make available for examination their records and books of account and other information or evidence;
 - (3) Issue subpoenas, which shall be returnable no less than ten (10) days from the date of service;
 - (4) Issue regulations, rulings, instructions or orders, pursuant to section 6-1-5;
 - (5) Conduct tax protest hearings, pursuant to section 6-1-15;
 - (6) Enter into cooperative agreements or joint powers agreements with the United States or any tribe or state for the exchange of information pertaining to, and the administration and enforcement of, tax laws; Provided that any such agreement shall be valid only when approved by resolution of the Pueblo Council;
 - (7) Perform such other activities as the Division may find necessary to carry out its responsibilities under this title; Provided that the Division shall have no authority to waive the sovereign immunity of the Division.
- B. Any subpoena issued by the Division pursuant to this section shall state with reasonable certainty the nature of the evidence required to be produced, the time and place the evidence is to be produced, and the consequences of failure to obey the

subpoena, and shall be attested by the Director of the Division.

- C. After service of a subpoena, if any person served neglects or refuses to produce records or other evidence or to allow the inspection of equipment, records, books, information or evidence in response to the subpoena, the Division may assess civil penalties under section 6-1-25.F and may invoke the aid of any court of competent jurisdiction or the United States Department of the Interior in enforcement of the subpoena.

Section 6-1-5. Administrative regulations, rulings, instructions and orders; presumption of correctness.

- A. The Director of the Division, with the concurrence of the Pueblo Council, is authorized to issue all regulations necessary to implement and enforce any provision of this title, pursuant to the provisions of this section. The Director of the Division, with the concurrence of the Governor, is authorized to issue all rulings, instructions or orders necessary to implement and enforce any provision of this title, pursuant to the provisions of this section.
- B. Regulations are written statements of the Director, of general application, interpreting and implementing this title. Before issuing a regulation, the Director shall comply with the following requirements.
 - (1) The Director shall publish notice of the proposed regulation in a local newspaper of general circulation and post such notice at the Division's offices. The notice shall make available to the public a copy of the proposed regulation, and shall specify the period available for public comment and the date, time and place of a public hearing on the proposed regulation.
 - (2) The Director shall establish a rulemaking docket no later than the date of notice of the proposed regulation, shall maintain the docket as necessary during the rulemaking process, and shall make the docket available to the public for inspection and copying during regular business hours. The docket shall contain copies of transcripts of any hearings and of each document submitted to or relied on by the Director in the rule making process.
 - (3) The Director shall provide a comment period of at least thirty (30) days, within which any person may submit written comments, data or documentary information, and present orally their views, data or arguments at the hearing scheduled for consideration of the proposed regulation. If no person notifies the Director of an intent to participate in the hearing on a proposed regulation in advance thereof, the Director may cancel the hearing without advance notice. If a hearing is held on a proposed regulation, the Director shall keep

the docket open for at least ten (10) days thereafter to provide an opportunity for submission of rebuttal and supplementary information.

- (4) After the comment period, the Director shall revise the proposed regulation as deemed appropriate by the Director and shall, with the written concurrence of the Pueblo Council, promulgate the regulation as final. All final regulations under this title shall be based on the record of the rule making proceeding contained in the docket and shall be accompanied by an explanation of the need for the regulation, the reasons for any major changes from the proposed regulation, and a response to each significant comment submitted in writing during the comment period.
- C. Rulings are written statements of the Director, of limited application to one or a small number of taxpayers, interpreting the tax laws to which they relate, ordinarily issued in response to a request for clarification of the tax consequences of a specified set of circumstances.
- D. Orders are written statements of the Director to implement a decision after a hearing.
- E. Instructions are other written statements or directives of the Director not dealing with the merits of any tax but otherwise in aid of the accomplishment of the duties of the Director.
- F. The extent to which regulations, rulings and orders will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.

Section 6-1-6. Address of notices; timely filing.

- A. Any notice required or authorized to be given by mail is effective if mailed to or served by the Division on the person in question at the last address shown in the records of the Division. Any notice, return, application or payment required or authorized to be delivered to the Division by mail shall be addressed to the Tax Administration Division, Pueblo of Laguna, P.O. Box 194, Laguna, New Mexico, 87026; or such other address designated by the Tax Administration Division.
- B. Except as otherwise provided by applicable law, all notices, returns, applications or payments authorized or required to be made or given by mail are timely if mailed on or before the date on which they are required, as shown by the postmark on the document.

Section 6-1-7. Designation of agent; required records; information returns.

- A. Each taxpayer shall designate, in writing to the Division, an agent who shall represent

and legally bind the taxpayer with respect to all obligations under this title.

- (1) The written designation shall be signed by the taxpayer; shall identify the taxable possessory interests and/or the taxpayer for which the agent is designated; shall list the name, address, telephone and facsimile numbers of the designated agent; and shall state that the taxpayer acknowledges it is bound by the designated agent's actions, inactions or submissions with regard to this title and that it is bound by any orders issued to the designated agent by the Division or the Pueblo Court with regard to this title.
 - (2) Taxpayers may change their designated agent at any time, provided that the taxpayer files a new written designation with the Division within fifteen (15) days of making the change in designated agent. The taxpayer will be bound by the previous designated agent until the Division receives the written change of designation.
- B. Every designated agent and taxpayer shall maintain books and records of account or other records in a manner that will permit the accurate computation of the taxes due under this title.
- C. The Division may, by regulation, require any person doing business within the Reservation to submit to the Division information returns that are reasonable and necessary for the administration of this title, including but not limited to establishing or determining the value of property for property taxation purposes.

Section 6-1-8. Liability for tax; taxpayer returns; extension of time.

- A. Each taxpayer is required to make payment to the Division for all taxes due under this title, and shall be responsible for the performance of all the other obligations of taxpayers under this title.
- B. Incomplete or otherwise inadequate tax returns may result in the computation of additional tax by the Division, and the taxpayer shall be liable for additional assessed taxes, interest, and penalties as provided in this chapter.
- C. A taxpayer is liable for any tax liability determined from information revealed in an audit of the taxpayer's records performed by the Division pursuant to section 6-1-17. Liability for the tax, interest, and penalties is computed from the date of the taxable transaction, irrespective of when the audit is performed or the tax liability is discovered by the Division, whether by audit or otherwise.
- D. Payment of all taxes due under chapter 2 of this title shall be paid as provided in chapter 2. Payment of all taxes due under chapters 3, 4, 5, and 6 of this title shall

accompany the applicable tax return. Delivery to the Division of a check that is not paid upon presentment does not constitute payment. Taxes shall be paid by check or money order made payable to the Pueblo of Laguna. Payment is timely made if it is received by the Tax Administration Division before midnight on the date on which the tax is due.

- E. The Division may grant an extension of time for the filing of a tax return and/or the payment of any tax, upon the timely request of the taxpayer. A request for extension is timely only if submitted on or before the due date of the return or payment at issue. No penalty for late payment shall be imposed on any payment for which an extension has been granted. However, interest on the tax shall begin to accrue from the date the tax was originally due notwithstanding the extension.

Section 6-1-9. Delinquent taxpayer.

Any taxpayer to whom taxes have been assessed or from whom payment has been demanded, as provided in section 6-1-10, who does not within thirty (30) days after the date of assessment or demand for payment make payment, protest the assessment or demand for payment as provided in section 6-1-15, or furnish security for payment acceptable to the Division, becomes a delinquent taxpayer and remains delinquent until:

- A. Payment of the total amount of all such taxes, interest and penalties is made;
- B. Security is furnished for payment; or
- C. No part of the assessment remains unabated.

Section 6-1-10. Assessment of taxes; presumption of correctness.

- A. If the Division determines that a taxpayer is liable for taxes that are due and that have not been previously assessed to the taxpayer, the Division shall promptly assess the amount thereof to the taxpayer. The filing of a tax return with the Division showing that a tax is due constitutes a self-assessment of the unpaid amount of the tax shown on the return.
- B. Assessments of tax are effective:
 - (1) When a return of a taxpayer is received by the Division showing a liability for taxes in excess of the tax payment accompanying the return, or
 - (2) When a notice of tax assessment issued by the Division is mailed or delivered in person to the taxpayer against whom the liability for tax payment is asserted, stating the nature and amount of taxes claimed, demanding

immediate payment and informing the taxpayer of the remedies available to the taxpayer.

- C. When taxes have been assessed to a taxpayer and remain unpaid, the Division may demand payment at any time.
- D. Any assessment of taxes or demand for payment made by the Division is presumed to be correct, and the taxpayer has the burden of showing the assessment or demand is not correct. A self-assessment by the taxpayer is not presumed to be correct.

Section 6-1-11. Limitations period for assessments and collections.

- A. No assessment of tax may be made by the Division for a tax reporting period more than five (5) years after the date on which the claim for the unpaid tax accrues.
- B. A claim for unpaid tax accrues when the tax is first payable, pursuant to the relevant chapter, provided that claims for tax liability that can only reasonably be determined by the Division from information that the taxpayer has failed to disclose in a tax return or other submittal to the Division are not barred and do not accrue until such information is provided to the Division.
- C. No administrative or judicial action or proceeding shall be brought to collect taxes assessed by the Division more than three (3) years after the date of such assessment.

Section 6-1-12. Exhaustion of administrative remedies.

No court has jurisdiction to entertain any proceeding by a taxpayer in which he calls into question his liability for any tax or the application to him of any provision of this title, except as a consequence of the appeal by the taxpayer to the Pueblo Court from the action and order of the Division, as provided in section 6-1-16.

Section 6-1-13. Authority to abate tax assessments.

- A. The Division, with the concurrence of the Governor, may abate any part of an assessment of tax, penalty and/or interest determined by the Division to have been incorrectly, erroneously or illegally made, either in response to a written protest submitted in accordance with section 6-1-15 or on the Division's own motion, based on information otherwise available to the Division.
- B. In the event of a final decision of the Division or the Pueblo Court under section 6-1-15 or section 6-1-16 that a person is not required to pay any portion of a tax assessed to that person, the Division shall cause that amount of the assessment to be abated.

Section 6-1-14. Claims for refund.

- A. Any taxpayer who believes that he has paid a tax subject to this chapter in excess of the amount for which he is liable, may apply for a refund within one (1) year from the date the tax was paid. The taxpayer has the burden of proving that the tax has been erroneously paid.
- B. Every claim for refund shall be filed as a fully completed amended tax return, shall state the nature of the claim and shall contain information sufficient to allow processing of the claim. Filing a fully completed amended tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in the tax due shown on the original and amended returns.
- C. In response to a claim for refund, the Division may authorize the refund of any overpayment of tax determined by the Division to have been erroneously made, together with allowable interest as described in section 6-1-19.
- D. The Division may allow the claim in whole or in part or may deny the claim in whole or in part in writing. If the claim is denied in whole or in part, the taxpayer may, within sixty (60) days after mailing of the Division's decision, file a written protest of the denial. If the Division has neither granted nor denied any portion of the claim for refund within one-hundred eighty (180) days after the date the claim was mailed or delivered to the Division, the claim shall be deemed denied, and the taxpayer may file a protest of the denial pursuant to section 6-1-15.
- E. Any refund may in the discretion of the Division be in the form of cash (in a lump sum or in installments over not more than two years) or a credit against future tax payments. Credits may be applied by the taxpayer in the amounts and on the schedule (not exceeding two years) approved by the Division.

Section 6-1-15. Protest procedure.

- A. A taxpayer may dispute the assessment of any amount of tax, the application to the taxpayer of any provision of this title, or the denial of a claim for refund made in accordance with section 6-1-14, by filing with the Division a written protest. Every protest shall identify the taxpayer and the tax or taxes involved and shall state the grounds for the protest and the affirmative relief requested.
- B. Any protest shall be filed:
 - (1) Within sixty (60) days after mailing or personal delivery of a notice of

assessment;

- (2) Within sixty (60) days of denial of a claim for refund made in accordance with section 6-1-14; or
 - (3) At the time of payment of a tax that is being paid under protest, pursuant to section 6-1-18.
- C. A protesting taxpayer must timely pay all accrued tax, penalty and interest on or before the date the protest is filed. Delinquent taxes may not be paid under protest.
 - D. Taxes that have been timely paid under protest shall be deposited in a suspense account and held in such account until the protest is resolved, including any timely appeals as authorized by this chapter.
 - E. If a protest is not filed in accordance with this section, the Division may proceed to enforce collection of any delinquent tax.
 - F. The Division may request additional information or hold such hearings or meetings as it deems necessary before issuing a decision on the protest. If the Division holds a hearing, the taxpayer shall appear at the hearing, either in person or through representatives of his choice. The hearing shall not be open to the public and shall be conducted in an informal manner. Technical rules of procedure and evidence shall not apply at the hearing, but the hearing shall be conducted to allow the Division and the taxpayer to present their evidence and positions in a fair and reasonable manner. A written transcript shall be made of the hearing.
 - G. The Division shall issue a written decision on the protest, summarizing the basis for the decision, within one-hundred eighty (180) days after the protest is filed. Failure to issue a final decision within that period shall constitute denial of the protest. The written decision shall include an order granting or denying the relief requested or granting such part thereof as is appropriate and supported by evidence, and it shall inform the protesting taxpayer of the right to, and the requirements for perfection of, an appeal from the decision to the Pueblo Court and of the consequences of a failure to appeal. The Division shall serve the taxpayer with a copy of the decision by certified mail or in person.
 - H. Unless the decision is appealed pursuant to section 6-1-16, a decision of the Division that grants in whole or in part a tax refund to the taxpayer shall be paid to the taxpayer or credited against future tax liabilities of the taxpayer, in the discretion of the Division, together with allowable interest as described in section 6-1-19. The payment may in the discretion of the Division be in the form of cash (in a lump sum or in installments over not more than two years) or a credit against future tax

payments. Credits may be applied by the taxpayer in the amounts and on the schedule (not exceeding two years) approved by the Division.

Section 6-1-16. Appeals from Division's decision and order.

- A. If the taxpayer is dissatisfied with the decision and order of the Division, or if the Division fails to decide the protest within the time required by section 6-1-15.F, the taxpayer or designated agent may appeal to the Pueblo Court, but only to the same extent and upon the same theory as was asserted before the Division. If an appeal is not so taken, the decision and order of the Division are conclusive.
- B. An appeal shall be perfected by filing a notice of appeal with the Clerk of the Pueblo Court, in the form prescribed by the Court, along with any docketing fee required by law. The date of filing shall be the date the notice of appeal is received and stamped by the Court Clerk.
- C. Simultaneously with the filing of a notice of appeal, the taxpayer shall serve a true copy thereof on the Division. A certificate stating the date and manner of service shall be filed with the notice of appeal.
- D. The notice of appeal must be filed within thirty (30) days from the date the decision and order of the Division is served on the taxpayer or from the date the protest is deemed denied under section 6-1-15.G, as the case may be.
- E. All appeals shall be upon the record made within the Division, unless the Pueblo Court, on motion of the taxpayer or the Division, permits an evidentiary hearing to supplement the record. Any motion requesting an evidentiary hearing must be filed within fifteen (15) days following the date of filing the notice of appeal. If the Court grants the motion, an evidentiary hearing shall be scheduled and notice of the hearing shall be served on the taxpayer and the Division no less than twenty (20) days prior to the date of the hearing.
- F. Except as otherwise provided in this chapter, the rules of procedure and evidence applicable to civil proceedings in the Pueblo Court shall apply to the appeal.
- G. The Pueblo Court shall independently weigh the evidence of record to assure that the applicable tax ordinances are lawfully administered and shall issue a written decision on the appeal.
- H. Nothing in this chapter shall authorize the Pueblo Court to enter any money judgment against the Division or any other agency of the Pueblo other than an order to refund the amount of any tax, interest or civil penalty erroneously paid by the taxpayer plus interest.

- I. The decision of the Pueblo Court shall be subject to appeal as provided by applicable law, and the decision on appeal shall be final and not subject to further review.
- J. A final decision of the Pueblo Court or the appellate court that grants in whole or in part a tax refund to the taxpayer shall be submitted to the Division for payment.

Section 6-1-17. Audits of taxpayer records.

- A. The Division may, through an audit, examine and verify business records and tax returns of a taxpayer in order to determine whether the appropriate amounts of tax have been paid. The taxes and reporting periods included in an audit shall be determined by the Division. An audit may involve requests that the taxpayer deliver additional information and records to the Division, and/or the examination of information and records by the Division at the taxpayer's place of business.
- B. Upon completion by the Division of an audit of the taxpayer for a tax and reporting period, the Division may assess any additional tax liability discovered from information provided in the audit.
- C. Any additional tax liability assessed by the Division pursuant to this section shall be conclusive for the tax and report period treated in the audit; provided that, an audit may be reopened if the taxpayer has failed to disclose information material to the calculation of a tax or to the taxpayer's liability for a tax.

Section 6-1-18. Taxes paid under protest.

Any person timely paying a tax subject to this chapter may pay the tax under protest, by filing a notice of protest with the Division at the time of payment. Delinquent taxes may not be paid under protest. Any protest filed under this section shall be subject to the procedures established by section 6-1-15 and section 6-1-16.

Section 6-1-19. Interest on overpayments of taxes.

- A. Interest shall be allowed and paid on the amount of tax overpaid by a person that is subsequently refunded or credited to that person.
- B. Interest on overpayments of tax shall accrue and be paid at the rate established for individuals pursuant to Section 6621 of the Internal Revenue Code, equal to the annual federal short term rate as determined by the United States Secretary of the Treasury under 26 CFR § 301.6621(b) plus three (3) percentage points, computed on a daily basis.
- C. Unless otherwise provided by this section, interest on an overpayment resulting from

a self-assessed tax or otherwise not arising from an assessment by the Division shall be paid from the date of the claim for refund until a date preceding by not more than thirty days the date of the credit or refund to any person; interest on an overpayment arising from an assessment by the Division shall be paid from the date of overpayment until a date preceding by not more than thirty days the date of the credit or refund to any person.

- D. No interest shall be allowed or paid with respect to an amount credited or refunded if:
 - (1) the amount of interest due is less than one dollar (\$1.00);
 - (2) the credit or refund is made within sixty days of the date of the claim for refund; or
 - (3) the credit results from overpayments found in an audit of multiple reporting periods and applied to underpayments found in that audit or refunded as a net overpayment to the taxpayer.
- E. Nothing in this section shall be construed to require the payment of interest upon interest.

Section 6-1-20. Collection of penalties and interest.

- A. Any civil penalties and interest imposed under this chapter may be collected with the amount of tax to which it relates, without separate assessment.
- B. The Division may, in its discretion, issue separate assessments of civil penalties for late filing or non-filing of returns or reports as provided in section 6-1-25 and for willful attempts to evade any tax or the payment thereof, as provided in section 6-1-26. Any such assessment shall be subject to the provisions of this chapter governing tax assessments.

Section 6-1-21. Seizure of property by levy.

- A. The Division may collect tax from a delinquent taxpayer by levy upon all property or rights to property of such person and the conversion thereof to money by appropriate and lawful means.
- B. A levy is made by taking possession of property pursuant to authority contained in a warrant of levy or by the service, by the Division or any other person who is authorized by the Pueblo Council to enforce laws within the Reservation, of the warrant upon the taxpayer or other person in possession of property or rights to

property of the taxpayer or upon any person owing or who will owe money to the taxpayer, ordering him to reveal the extent thereof and surrender it to the Division forthwith or agree to surrender it or the proceeds therefrom in the future, on the terms and conditions stated in the warrant.

C. A warrant of levy shall:

- (1) Bear on its face a statement of the authority for its service and compelling compliance with its terms and shall be attested by the Director;
- (2) Identify the taxpayer whose liability for taxes is sought to be enforced, the amount thereof and the date or approximate date on which the tax became due;
- (3) Order the person on whom it is served to reveal the amount of property or rights to property in his own possession that belong to the taxpayer and the extent of his own interest therein, and to reveal the amount and kind of property or rights to property of the taxpayer that are, to the best of his knowledge, in the possession of others;
- (4) Order the person on whom it is served to surrender the property forthwith but may allow him to agree in writing to surrender the property or the proceeds therefrom on a certain date in the future when the taxpayer's right to it would otherwise mature;
- (5) State on its face the penalties for willful failure of the person upon whom it is served to comply with its terms; and
- (6) State that the Division claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties.

Section 6-1-22. Surrender of property subject to levy.

- A. Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made shall surrender the property or rights, or discharge such obligation, to the Division, except for that part of the property as is, at the time of such demand, the subject of a bona fide attachment, execution, levy or other similar process.
- B. Any person who wrongfully fails or refuses to surrender, as required by this section, any property or rights to property levied upon, upon demand by the Division, is liable for a civil penalty in an amount equal to the lesser of the value of the property or rights to property not so surrendered or the amount of the taxes for the collection of

which such levy has been made.

- C. The surrender by a person in possession of or obligated with respect to property, rights to property or proceeds from the sale or other disposition of property subject to levy upon which a levy has been made discharges such obligation to the Division. A surrender by a person shall be a defense against the assertion of any obligation or liability to the delinquent taxpayer or any other person with respect to such property or rights to property arising from the surrender or payment.

Section 6-1-23. Assessment lien.

- A. If any taxpayer liable for any tax subject to this chapter neglects or refuses to pay the tax after assessment as provided in section 6-1-10, the amount of the tax, including all accrued interest and penalties, shall be a lien in favor of the Pueblo upon all property and rights to property belonging to the person and found within the Reservation.
- B. The lien imposed by subsection 6-1-23.A shall arise at the time assessment has been made and shall continue until the liability for payment of the amount assessed is satisfied and the lien is released by the Division.
- C. As against any mortgagee, pledgee, purchaser, judgment creditor, lienor for value or other encumbrancer for value, the lien imposed by subsection 6-1-23.A shall be considered to have arisen and become effective when notice of the lien has been filed by the Division with the Laguna Agency Office of the Bureau of Indian Affairs.
- D. A notice of lien shall identify the taxpayer whose liability for taxes is sought to be enforced, the date or approximate date on which the tax became due, and the amount of tax claimed to be due, and shall state that the Pueblo claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties. A copy of any notice of lien shall be served on the taxpayer affected.
- E. Partial payment of the amount due shall reduce the amount of the lien by the amount paid. The Division may release the lien when payment of the tax, plus any penalty and interest, is adequately guaranteed by other security. The Division shall file a document releasing the lien, completely or partially as applicable, with the Laguna Agency Office of the Bureau of Indian Affairs.
- F. The Division may foreclose upon the property subject to a lien imposed by subsection 6-1-23.A by filing a civil action in the Pueblo Court or other court of competent jurisdiction for that purpose. In the event of a foreclosure or surrender pursuant to

section 6-1-22, the property shall be sold in a commercially reasonable manner and the proceeds applied to the expenses of the foreclosure and then to the liability for costs, penalties, interest and tax. Any remaining balance shall be remitted to the taxpayer.

- G. In all instances where a notice of lien for taxes, penalties and interest has been filed, no foreclosure upon the property subject to the lien may be made by the Division after more than three (3) years have elapsed following the date on which the lien was filed.

Section 6-1-24. Interest on deficiencies.

- A. If a tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the Division on that amount from the first day following the day on which the tax becomes due, without regard to any extension of time or installment agreement, until it is paid, except that:
 - (1) if the amount of interest due at the time payment is made is less than one dollar (\$1.00), then no interest shall be due;
 - (2) if demand is made for payment of a tax, including accrued interest, and if the tax is paid within ten days after the date of the demand, no interest on the amount paid shall be imposed for the period after the date of the demand; and
 - (3) when, as the result of an audit, an overpayment of a tax is credited against an underpayment of tax, interest shall accrue from the date the tax was due until the tax is deemed paid.
- B. Interest due to the Division under this section shall be at the rate of fifteen percent (15%) a year, computed on a daily basis.
- C. Nothing in this section shall be construed to impose interest on interest or interest on the amount of any penalty.

Section 6-1-25. Civil penalties.

- A. In the case of failure, due to negligence or disregard of applicable ordinances and regulations, but without intent to evade or defeat a tax, to pay when due any amount of tax required to be paid or to file by the date required a return regardless of whether any tax is due, there shall be added to the amount of tax as penalty the greater of:
 - (1) Two percent (2%) of the amount of tax due, for each month or any fraction of a month from the date the tax was due until paid, but not to exceed twenty

percent (20%) of the tax due but not paid; or

(2) Two percent (2%) of the amount of tax liability established in the late return, for each month or any fraction of a month from the date the return was required to be filed until filed, but not to exceed twenty percent (20%) of the tax liability established in the late return; or

(3) Five Dollars (\$5.00).

- B. No penalty shall be assessed against a taxpayer if the failure to pay an amount of tax when due results from a mistake of law made in good faith and on reasonable grounds.
- C. In the case of failure, with willful intent to evade or defeat a tax, to pay when due the amount of tax required to be paid, there shall be added to the amount fifty percent of the tax or a minimum of twenty-five dollars (\$25.00), whichever is greater, as penalty.
- D. If demand is made for payment of a tax, including penalty imposed pursuant to this section, and if the tax is paid within ten days after the date of such demand, no penalty shall be imposed for the period after the date of the demand with respect to the amount paid.
- E. No penalty shall be imposed on tax that is deemed paid by crediting overpayments found in an audit of multiple periods.
- F. In the case of failure to respond to a subpoena issued pursuant to section 6-1-4 or otherwise to comply with any other requirements of this title, the Division shall impose a penalty of Five Hundred Dollars (\$500.00). If the taxpayer still fails to comply after thirty (30) days, the Division shall impose an additional penalty of up to One Thousand Dollars (\$1,000.00), with the precise amount determined by the Division in the Division's discretion. For every thirty (30) days thereafter that the taxpayer still fails to comply, the Division shall assess an additional penalty of up to Two-Thousand Five-Hundred Dollars (\$2,500.00), with the precise amount determined by the Division in the Division's discretion.
- G. If any payment required to be made under this title is attempted to be made by check which is not paid upon presentment, such dishonor shall be deemed proof of negligence for purposes of subsection 6-1-25.A. The penalty shall never be less than ten dollars (\$10.00) and is in addition to any other penalty imposed by law.

Section 6-1-26. Attempts to evade or defeat tax.

- A. Any taxpayer who willfully attempts to evade or defeat any tax or the payment

thereof, in addition to other penalties provided by this chapter, shall be subject to a civil penalty of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00).

- B. The Division may initiate a civil proceeding in the Pueblo Court to enforce against the taxpayer the civil penalties authorized by this section and section 6-1-25.

Section 6-1-27. Administrative reports.

- A. The Division shall prepare and submit a report to the Budget and Finance Committee annually, by October 15, projecting the amount of tax revenues to be collected for the next calendar year.
- B. The Division shall prepare and submit a quarterly report to the Budget and Finance Committee, showing the amount of tax receipts collected, and such other information as is deemed necessary by the Pueblo Council, the Budget and Finance Committee or the Division, including information necessary to determine the amount of money collected which is unencumbered.

Section 6-1-28. Timeliness when last day for performance falls on Saturday, Sunday or legal holiday.

When by any provision of this title the last day for performing any act falls on Saturday, Sunday or a legal holiday recognized by the Pueblo, the performance of the act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

Section 6-1-29. Successor liability.

- A. Any person who buys substantially all of the business assets of a taxpayer that are located on the Reservation shall withhold from the purchase price and pay to the Division the amount of all unpaid taxes owed by the taxpayer at the time of the purchase.
- B. Any purchaser who fails to withhold and pay over the taxes described in subsection 6-1-29.A shall be personally liable for such unpaid taxes. The Division is authorized to assess such taxes against the purchaser and to collect them as provided in this chapter.
- C. In response to a written request from the taxpayer, the Division will identify the amount of any unpaid taxes for which the purchaser may be liable under this section.

The purchaser shall not be liable to the Division for any unpaid taxes of the taxpayer in excess of the amount so identified. If the taxpayer's actual liability exceeds the amount identified by the Division under this subsection, the taxpayer shall remain liable for all taxes actually due and unpaid.

Section 6-1-30. Limited waiver of sovereign immunity.

Any challenge to the validity or application of any tax subject to this chapter may be brought only in the Pueblo Court, and only in accordance with the procedures established by this chapter. The Pueblo waives its sovereign immunity from suit solely for the purpose of filing an appeal as provided in section 6-1-16. The Pueblo does not waive its sovereign immunity from suit in the courts of any other jurisdiction for any claim arising from the administration or enforcement of any tax subject to this chapter.

Section 6-1-31. Confidentiality of returns and other information.

- A. It is unlawful for any employee of the Division or any former employee to disclose to any person any information contained in a tax return or an informational return or report required by this chapter or any other information about a taxpayer acquired as a result of his employment by the Division, except:
- (1) to another employee of the Division or the Finance Department;
 - (2) to the Pueblo Governor, the Pueblo Treasurer, the Pueblo Secretary, or a member of the Pueblo Council, provided that disclosure is necessary for the recipient to carry out an official duty and the information is kept confidential by the recipient;
 - (3) To an authorized representative of the U.S. Division of the Treasury, pursuant to a reciprocal agreement for the exchange of information;
 - (4) To an authorized representative of another tribe or a state, provided that the receiving tribe or state has entered into an agreement with the Division to use the information only for tax purposes and provided that the receiving tribe or state has enacted confidentiality laws similar to this Section;
 - (5) To a court of competent jurisdiction in an action relating to taxation to which the Division and the taxpayer or designated agent are parties, or in an action to enforce any tax liability of the taxpayer to which the Division is a party;
 - (6) To the taxpayer or its designated agent or other authorized representative;

- (7) To the Pueblo's legal counsel; or
 - (8) In such manner and form that the information revealed does not identify the particular taxpayer to which the information relates.
- B. Nothing in this section prohibits the Division from disclosing to any person:
- (1) whether a person is or is not registered with the Division as a taxpayer; or
 - (2) the final decision and order of the Division in any protest filed under section 6-1-15.

Section 6-1-32. Notice of Amendments.

The Division shall notify taxpayers promptly of any amendments to this title adopted by the Pueblo Council.

Section 6-1-33. Effective date.

This chapter shall be effective on January 1, 2011.

Section 6-1-34. Severability.

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

CHAPTER 2. POSSESSORY INTEREST TAX

Section 6-2-1. Tax administration division. [Repealed]

Section 6-2-2. Definitions. [Repealed]

Section 6-2-3. Rate of tax.

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

Section 6-2-4. Computation of value of possessory interest.