



PUEBLO OF LAGUNA
Tax Administration Division
P.O. Box 194
LAGUNA, NEW MEXICO 87026
(505) 552-5787



Office of:
The Governor
The Secretary
The Treasurer

(505)552-6654
FAX: (505)552-6941

Tax Ruling

No. TAD.2011.01

- Subject:** The applicability of the Pueblo of Laguna Gross Receipts Tax (GRT) to commercial construction projects undertaken for and by Pueblo of Laguna governmental entities, political subdivisions, and Pueblo-owned businesses within the exterior boundaries of the Laguna Reservation.
- Issue:** The specific issue raised is whether the Pueblo of Laguna Utility Authority (UA), a governmental entity of the Pueblo of Laguna, is subject to the Pueblo's GRT when undertaking construction projects for the Pueblo of Laguna.
- Facts:** In the Memorandum of Agreement (MOA) between the Pueblo of Laguna (The Pueblo) and the Indian Health Service (IHS), the IHS has agreed to provide one-hundred percent (100%) funding to the Pueblo to assist in the construction of "sanitation facilities" for three (3) new or newly renovated residential homes scattered throughout the Laguna Reservation; a project to be known hereinafter as Project #11-123. Furthermore, in accordance with the "Tribal Procurement" provision within the agreement, the Pueblo has opted to contract with the UA to provide construction services as directed under Project #11-123.
- Ruling:** Receipts of the Pueblo, its governmental entities, political subdivisions, or Pueblo-owned businesses from performing construction services within the exterior boundaries of the Pueblo of Laguna for a commercial or governmental entity are receipts from engaging in "commercial construction services" and are subject to the Pueblo's Gross Receipts Tax, unless exempted by 6-3-6(E). The exemption under 6-3-6(E) does not apply to the UA's receipts at issue in this ruling.
- Analysis:** In the matter presented before the TAD, concerning the applicability of the Pueblo's GRT to Project #11-123 for which the Pueblo has chosen to contract the services of the Pueblo of Laguna Utility Authority, the Division finds that:

Pursuant to the Memorandum of Agreement between the Indian Health Service and the Pueblo of Laguna, the Pueblo is the recipient and expeditor of federal funding for use in Project #11-123, is the person that has contracted with the UA to carry on construction services, and for purposes of interpretation of the Pueblo's GRT, is recognized as the buyer of the construction services.

The UA, having been contracted by the Pueblo in accordance with the "Tribal Procurement" provision within this agreement, is the person carrying on construction services with the purpose of direct or indirect benefit, and for the purposes of interpretation of the Pueblo's GRT, is recognized as the seller of the construction services.



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Although the construction services provided by Project #11-123 are intended for incorporation into the residential homes of members of the Pueblo of Laguna, individual Pueblo member is not the buyer of the service. Therefore, the exemption listed under Section 6-3-6(M) does not apply. In order for this exemption to apply, the buyer of the construction services must reside within the residence upon which the construction service will be performed.

Additionally, since the Pueblo of Laguna is the buyer of the construction services, the transaction, by definition under Section 6-1-2, becomes a commercial construction service. Receipts from commercial construction services are not exempt under Section 6-3-6(D), and are subject to the Pueblo's GRT. This exemption reflects the policy that receipts from performing commercial construction services for the Pueblo, its governmental entities, political subdivisions, or Pueblo-owned businesses, within the exterior boundaries of the Laguna Reservation, are subject to the Pueblo's GRT.

Although Section 6-3-6(C) exempts the receipts of the Pueblo, its governmental entities, political subdivisions, and Pueblo-owned businesses, from the performance of "services" in general, the exemption does not extend to receipts from commercial construction services. The taxation of receipts from commercial construction services is specifically addressed in Section 6-3-6(D), which takes precedence over the general exemption in Section 6-3-6(C).

Consequently, any person performing commercial construction services for the Pueblo, its governmental entities, political subdivisions, or Pueblo-owned businesses, within the exterior boundaries of the Laguna Reservation, is subject to the Pueblo's GRT. The only exception to this rule is if the buyer of the commercial construction services is one of the Villages.

Governing Statutes:

Chapter 3, Section 6-3-4, Imposition and rate of tax

- (A) Except as otherwise provided in this Chapter, for the privilege of engaging in business on the Reservation, an excise tax on gross receipts, to be known as the Pueblo Gross Receipts Tax, is hereby imposed on any person engaging in business within the exterior boundaries of the Reservation...

Chapter 3, Section 6-3-6, Exemptions

- (C) Sales or leases of tangible personal property and the performance of services by the Pueblo, its governmental entities and political subdivisions, and Pueblo-owned businesses;
- (D) Sales or leases of tangible personal property to and the performance of services other than commercial construction services for, the Pueblo, its governmental entities and political subdivisions, and Pueblo-owned businesses, except as provided in section 6-3-6.E;
- (E) Sales or leases of tangible personal property to, and the performance of services including commercial construction services for, any of the Villages;



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- (M) Sales of construction material and the performance of construction services for incorporation into the buyer's residence;

Definitions: **Engaging in business** – 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 (Chapter 1, Section 6-1-2. Definitions)

Gross Receipts – 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.

Person – 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.

Pueblo of Laguna Reservation or Reservation – 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 – 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.

Tangible personal property – 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.

Commercial Construction Services – Construction undertaken for a commercial or governmental entity.

Construction –

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



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- (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 excavation 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 – Tangible personal property that becomes or is intended to become an ingredient or component part of a construction project.

Authorization:

Richard Luarkie, Governor

8/12/11

Date

Edwin G. Martinez, TAD Director

8/11/11

Date