

# FOREST COUNTY POTAWATOMI COMMUNITY TAX COMMISSION

## **Guidance on the Tax Treatment of Fees Associated with Bank Transactions**

**Question Asked:** “Are fees paid by patrons of the Forest County Potawatomi Community’s wholly owned gaming enterprises for ATM, check cashing or credit card cash advance transactions a taxable event?”

### **Application of the Tax Regulations to the Question Presented.**

The Tax Commission has the broad authority to tax Sales and Services on Tribal Lands unless a specific exemption applies. Regulation 1.5.18 states:

1.5.18 “Sale,” “Sale, Lease or Rental,” “Retail Sale,” “Sale at Retail,” or equivalent terms include any one or all of the following: transfer of ownership of, title to, possession of, or enjoyment of Property, Motor Vehicle Fuel, or Services for use or consumption, but not for resale of Property or Services.

Furthermore, Services are broadly defined in Regulation 1.5.19, which states:

1.5.19 “Service” is defined to mean all acts or services rendered, furnished or performed, except services performed on tangible personal property delivered outside the jurisdiction of the Tribe, services used in processing tangible personal property for use in taxable retail sales or services, or services for an employer for a valuable consideration. The tax shall be due and collectible when the service is rendered, furnished or performed for the ultimate user thereof.

In this situation the transfer of possession of the funds so that the patron can enjoy the Property applies along with the transaction being a Service for use or consumption of the Property. The patron is paying a fee for the convenience of accessing their cash at the gaming enterprise. The fee paid for this transfer or service is taxable.

Finally, there are no exemptions in Regulation 8.1 that apply to this activity.

Based on the analysis above as applied to the question presented, the Tax Commission has determined that the activity is taxable.