



**FOREST COUNTY POTAWATOMI  
LEGAL**

Jeffrey A. Crawford  
Aaron Loomis  
Douglas W. Huck  
Michael B. Wacker

Sara M. Drescher  
Scott Thomsen  
William P. Dockry  
Amy O'Melia

Adrianna Shannon  
Kelly Hedge  
Dennis Puzz, Jr.

**FCPC ATTORNEY-CLIENT COMMUNICATION  
CONFIDENTIAL & PRIVILEGED**

**DATE:** November 16, 2022

**TO:** Nickolas Shepard, Chairperson, Tax Commission  
Jeryl Perenich, Secretary, Tax Commission  
Mary Shepard, Commissioner, Tax Commission

**FROM:** Dennis Puzz, Jr., Attorney *DP*

**CC:** Victoria Daniels, Executive Director

**RE:** 11M0691E Legal Approval of Guidance on Concession Sales

---

THIS MEMORANDUM IS FOR INTERNAL USE ONLY AND SHOULD NOT BE GIVEN TO OUTSIDE PARTIES. THIS MEMO MAY CONTAIN NEGOTIATION AND OTHER ATTORNEY/CLIENT INFORMATION FOR USE BY MANAGEMENT THAT SHOULD NOT BE RELEASED. SHOULD YOU HAVE A QUESTION ABOUT THE INFORMATION YOU MAY SHARE WITH OTHER PARTIES PLEASE CONTACT THE ATTORNEY LISTED ABOVE.

I have no legal concerns regarding the Guidance on Concession Sales.

The Commission has monitored concession sales for a couple of years. Initially, the Commission required all vendors to register and collect sales and use tax. This was very difficult for the vendors and resulted in de minimis tax being collected. Due to the infrequent sales and de minimis tax generated, the Commission decided to require businesses to register for concession sales so that sales volume could be monitored to ensure the sales were infrequent but official guidance wasn't issued on this position of the Tax Commission.

The attached guidance gives the regulatory analysis that supports the treatment the Tax Commission is giving concession sales. Since the Tax Commission already has a regulatory exemption change that must go before the Executive Council for approval, it would be appropriate to include this guidance in the packet so that Executive Council is aware.

Once full approval is secured, the Guidance should be published on the Tax Commissions webpage.

Should you have any questions regarding this matter, please contact me.

{00945495.1}

# FOREST COUNTY POTAWATOMI COMMUNITY TAX COMMISSION

## **Guidance on Whether Concession Stand Sales Qualify for a Casual Sales Exemption**

**Questions Asked:** “Are concession stand sales at the Stone Lake C-Store or similar sales at other tribally owned properties taxable?”

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

Section 8.1.8 states “Nothing in the Sales Tax Code shall be construed as imposing a Tax on any Casual Sales as such sales are defined in the Tax Regulations.”

Section 1.5.2 defines Casual Sales in two categories. The applicable category for this analysis is:

Section 1.5.2.1 states “Sale of tangible personal property by the owner or the rendering, furnishing or performing of a non-recurring service by the provider, if at the time of sale the seller is not engaged for profit in the business of selling tangible personal property or services.”

The Tax Commission has monitored the use of concession stand sales and similar sales at tribally owned buildings and determined that these sales are largely by tribal members who are engaging in short term sales of personally owned property typically in a fundraising capacity for a personal or community use. **As such these sales fall within the intention of Casual Sales as defined in Section 1.5.2.1 and are therefore not taxable.**

However, to ensure that any sales at the concession stand at the Stone Lake C-Store and any similar sales at tribally owned properties are Casual Sales and not the operation of a business for profit, each person intending to engage in such sales must register with the Tax Commission and provide any information reasonably requested by the Tax Commission to ensure the Casual Sales Exemption applies. If the Tax Commission determines the Casual Sales Exemption no longer applies to any applicant, the applicant shall collect Sales and Use Tax in compliance with the Code and Regulations from that point forward.