

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.