



**FOREST COUNTY POTAWATOMI
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**FCPC ATTORNEY-CLIENT COMMUNICATION
CONFIDENTIAL & PRIVILEGED**

DATE: May 10, 2023

TO: Hartford Shegonee, Commissioner, Tax Commission
Jeryl Perenich, Commissioner, Tax Commission
Mary Shepard, Commissioner, Tax Commission

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

CC: Victoria Daniels, Executive Director

RE: 11M0691G Legal Approval of Guidance on Occasional 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.

The Commission requested guidance be created on the applicability of the Casual Sales Exemption to the following sales: 1) cultural items; 2) food items; 3) garage sales; 4) fireworks. The attached guidance was reviewed and approved by the Tax Commission for substantive content at the Tax Commission meeting on May 10, 2023.

I have no legal concerns regarding the Agreement. Execution is a management decision.

All agreements must be in writing, as it is against tribal policy for employees to enter into or make any commitments regarding an agreement, only the Chairman or the Vice-Chair has the authority to sign contracts.

As the person submitting the Agreement for review, you have a responsibility to protect the interest of the Tribe. It is also your responsibility to review the Agreement in its entirety and fully and completely understand all of the terms and conditions of the Agreement. Do not present the Agreement for execution until you are completely satisfied that you understand the terms and conditions of the Agreement.

Should you decide to enter into the Agreement, please provide the Legal Department with a fully executed copy for our records.

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

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FOREST COUNTY POTAWATOMI COMMUNITY TAX COMMISSION

Guidance on the Application of the Casual Sales Exemption to Common Activities Within the Commission's Jurisdiction

Questions Asked: "Is the sale of cultural items taxable?"

"Is the sale of food items taxable?"

"Are garage sales taxable?"

"Are fireworks sales 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."

Sale of cultural items

If the items being sold are the personal property of the seller and the seller is not engaged for profit in the business of selling cultural items, the Casual Sales Exemption applies.

However, if the seller gathers cultural items from multiple producers and sells them, the items are no longer personal property, but inventory and the Casual Sales Exemption does not apply.

Also, if the seller has multiple sales of cultural items each year, the Casual Sales Exemption might not apply because the sales might be determined to be of inventory in a for profit business rather than the sales of personal property.

Sale of food items

Whether these sales are exempt as Casual Sales will hinge on whether the items being sold are personal property or inventory in a for profit business. The Concession Stand guidance is informative for this scenario. If the sales are infrequent and of a modest volume, the Commission will apply the Casual Sales Exemption.

{00977102.1}

P.O. BOX 340, CRANDON, WI 54520

FOREST COUNTY POTAWATOMI COMMUNITY TAX COMMISSION

Garage Sales

If the items being sold are the personal property of the seller and the seller is not engaged for profit in the business of selling items, the Casual Sales Exemption applies.

However, if the seller gathers items from multiple producers and sells them, the items are no longer personal property, but inventory and the Casual Sales Exemption does not apply.

Also, if the seller has multiple garage sales each year, the Casual Sales Exemption might not apply because the sales might be determined to be of inventory in a for profit business rather than the sales of personal property.

Fireworks Sales

If the items being sold are the personal property of the seller and the seller is not engaged for profit in the business of selling items, the Casual Sales Exemption applies. This would only be true, in situations where an individual bought more than they can use or bought extra fireworks for a friend or neighbor.

In most instances, firework sales are seasonal and an inventory is purchased for resale as a for profit business. **Therefore, any sizable firework sales are presumed to be taxable sales of inventory in a for profit business.** If an exemption is sought, a specific request to the Tax Commission is required.