

ORDINANCE NO. 1 OF 1990
AMMENDED NOVEMBER 24, 1999

ORDINANCE OF THE TRIBAL COUNCIL
OF THE BISHOP PAIUTE TRIBE ADOPTING
A TRIBAL SALES AND FUEL TAX

The Tribal Council of the Bishop Paiute Tribe (hereinafter "Tribal Council"), hereby ordains as follows:

SECTION 1. SALES TAX

Any business (other than the Tribe, its political subdivisions or joint powers agencies* which it has joined or authorized by Ordinance) doing business on the reservation shall pay a sales tax to the tribal taxing authority equal to 6% of the sales price of any tangible personal property subject to this Ordinance (hereinafter "property") sold to any consumer.

For purposes of this section a business is doing business on the reservation when it is physically located on the reservation either temporarily or permanently, or when located outside the boundaries of the reservation, it negotiates a sale to a consumer at its place of business, but agrees to deliver the purchased item to the reservation. It is the intent of this section to have all contractors and vendors pay to the Tribe all sales taxes that would under State tax law be paid to the State. See SECTION 9.

SECTION 2. DEFINITIONS

1. **"Business"** means any person engaged in a activity with the object or result of gain, benefit or advantage for the person so engaged, either direct or indirect, and where appropriate to the context in which the term is used, the activity itself.
2. **"Consumer"** means any person including the Tribe who purchases any property from any business doing business on the reservation where the purchase occurs on the reservation. For purposes of this section a purchase also occurs on the reservation when property is purchased from a business physically located outside the boundaries of the reservation, but delivered to the consumer on the reservation by the business directly or through a third party such as a common carrier.
3. **"Person"** includes, but is not limited to any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustees in bankruptcy, syndicate, the United States, the State of California, any county, city and county, municipality, district, or other political subdivision of the State of California, another state, or its

political subdivisions, the Tribe, or any of its political subdivisions or joint powers

agencies of which it is a member, any other tribe or combination acting as a unit.

4. **"Purchase"** means and includes:

- (1) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of property for consideration. "Transfer of possession" includes only transactions found by the taxing authority to be in lieu of a transfer of title, exchange, or barter.
- (2) A transaction whereby the possession of property is transferred by the seller retains the title as security for the payment of the price.
- (3) A transfer for a consideration of property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.
- (4) Any lease of property in any manner or by any means whatsoever, for consideration.

5. **"Reservation"** means the Bishop Paiute Reservation.

6. **"Sale" or "Sold"** means and includes:

- (1) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of property for a consideration. "Transfer of possession" includes only transactions found by the taxing authority to be in lieu of a transfer of title, exchange, or barter.
- (2) The producing, fabricating, processing, printing, or imprinting of property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.
- (3) The furnishing and distributing of property for a consideration by social clubs and fraternal organizations to their members or others.
- (4) The furnishing, preparing, or serving for a consideration of food, meals, or drinks.
- (5) A transaction whereby the possession of property is transferred, but the seller retains the title as security for the payment of the prices.
- (6) A transfer for a consideration of the title or possession of property, which has been produced, fabricated, or printed to the special order of the customer, or of any publication.
- (7) Any lease of property in any manner or by any means whatsoever for a consideration.

7. **"Sales Price"** means the total amount valued in money paid or agreed to be paid or charged to the consumer for any item of property in a sale between the transferor and transferee, excluding any separately itemized charges for installing or servicing the property.
8. **"Sales Tax"** means the tax imposed by Section 1 of this Ordinance.
9. **"Tangible Personal Property Subject to this Ordinance" or "Property"** means construction materials and components, and other tangible personal property incorporated into, attached to, or affixed to, real property by licensed construction contractors in the performance of a construction contract and which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of the real property. It also means and includes fixtures sold in connection with the performance of a construction contract by a licensed construction contractor, which includes items accessory to a building or other structure that do not lose their identity as accessories when installed. "Tangible Personal Property" as used in this paragraph means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.
10. **"Tribal Taxing Authority (AUTHORITY)"** means the Bishop Tribal Council.
11. **"Tribe"** means the Bishop Paiute Tribe.

SECTION 3. RETURNS

1. Any business subject to sales tax shall report all sales subject to the tax to the Tribal Taxing Authority as provided for in this section.
2. Any business subject to sales tax shall report all sales subject to the tax to the Tribal Taxing Authority on such forms and at such times as the taxing authority shall prescribe by regulation, as authorized by Section 5 of this Ordinance

SECTION 4. PAYMENT

Each business shall pay sales tax to the Tribal Taxing Authority upon demand of the Tribal Taxing Authority. Failure to pay the tax within ten (10) days of demand shall render such business liable to the authority as on any other debt. Moreover, the Authority shall have the right to set off the amount owing as sales tax against any moneys the

Authority or the Tribe may otherwise owe the taxpayer. This remedy shall be in addition to any other remedy the Authority may have to collect or enforce the payment of sales taxes due and unpaid under this Ordinance. Nothing contained in this Ordinance shall be construed as waiving the sovereign immunity of the Tribe, its Tribal government or the Tribal Taxing Authority.

SECTION 5. TRIBAL TAXING AUTHORITY

1. Authority: The Tribal Council in accordance with Section 2, subsection 10, is to act as the Tribal Taxing Authority to administer and enforce the provisions of this Ordinance pursuant to this Section 5. The Tribal Taxing Authority shall act as a branch of the Tribal government for this purpose and shall exercise all of the powers of the Tribal government necessary or convenient to the administration and enforcement of this Ordinance.

2. Powers: In order to administer and enforce the provisions of this Ordinance, the Tribal Taxing Authority shall have the power to:
 - (a) Appoint one or more officials to act as tax officials and to specify the said officials shall have the right to assess and collect sales taxes according to regulations adopted by the Authority.
 - (b) To adopt regulations governing taxpayer reporting responsibilities, procedures for enforcing compliance with reporting responsibilities, procedures for assessing tax liability, procedures for collecting taxes that are due but unpaid, and procedures for remitting collected taxes to the Tribe. Said regulations shall become effective thirty (30) days after the Authority provides a copy of the proposed regulation to the general public through posting for comment. The regulations shall, at a minimum:
 - (1) provide the taxpayer with prior notice of assessed tax liability and an opportunity for a hearing before a hearing officer or panel established by the taxing authority. All decisions of the hearing officer or panel shall be final.
 - (2) protect the taxpayer from paying both a state sales tax and a tribal sales tax with respect to the same sale by providing a procedure whereby the taxpayer can establish, to the satisfaction of the Authority, that the taxpayer has done everything legally required under State law to exempt the sale from State sales tax and that the State Board of Equalization nevertheless has assessed and demands payment of the State sales tax with respect to the sale. If the taxpayer makes such a showing within reasonable time limits established by Authority regulations, the Authority at its option shall waive the tribal sales tax, refund the tax if already collected or enter into an agreement with the taxpayer under which the taxpayer assigns its rights to the Authority and the Authority agrees to indemnify and hold the taxpayer harmless from any costs associated with opposing the State sales tax and any State sales tax liability in order that the taxing authority can legally challenge the

State's authority or jurisdiction to impose its tax with respect to the sale; and

- (3) provide that all sales taxes collected by the Authority shall be deposited in a separate interest bearing account to the credit of the Tribe until remitted to the Tribe and that the Tribe's share of all taxes collected with respect to a sale shall be remitted to the Tribal general fund within three (3) months after the time to appeal any decisions of the Authority have been rendered after appeal or any challenge to a State sales tax is finally resolved. In the case of sales tax imposed in connection with a contractor's performance of a construction contract on the reservation, said taxes shall be remitted to the Tribal general fund within three (3) months after final payment has been made to the contractor unless the taxing authority has exercised its option to challenge the state sales tax in which case the funds shall be remitted to the Tribal general fund three (3) months after challenge is finally resolved in favor of the taxing authority.
- (c) As one means of collecting taxes that are due but unpaid, is to set off the uncollected taxes against any debts owed by the Authority or the Tribe or any other branch of the Tribal government to the taxpayer. For purposes of collecting such taxes only, and only to the extent necessary for the purpose, the Tribe hereby assigns to the Authority any debts that it now owes or may incur in the future to any taxpayer and
- (d) Where the Tribal Council acts as the Tribal Taxing Authority as provided in Section 2, Subsection 10, it shall have the authority to levy tax liens on funds in the possession of any agency or subdivision of the Tribal government which are due or to become due to the taxpayer. Such liens may only be imposed after completion of the procedures required by Subsection 2.b (1) of this Section 5. Any Tribal agency or subdivision upon which such a lien is levied shall within five (5) working days of its receipt, remit the amount of the levy to the Tribal Council. Said agency or subdivision shall send notice of the levy to the taxpayer within five (5) working days of its receipt.
- (e) To take any other action necessary to administer or enforce this Ordinance, including filing in its own name or the Tribe's name in any court of competent jurisdiction to collect sales taxes that are due but unpaid; provided that this power does not expressly or impliedly waive the Tribe's or the Authority's sovereign immunity from suit or subject the Authority or the Tribe to any cross-claim, counter-claim, third

party claim or other counter-suit.

SECTION 6. GAMING

- (a) Notwithstanding Sections 1 and 2(9), the Paiute Palace Casino is required to pay sales tax to the Tribe on the sales of all "property" sold to the public.

For purposes of this Section 3 only, the definition of "property" includes all revenues received by the Casino derived from Class II and Class III gaming and related activities.

In the case of gaming activities "net revenue" is defined as revenue left after all payouts, but before allowance for expenses.

"Gaming activities" are defined as all games of chance played in the Casino as allowed by the Tribal Gaming Ordinance.

In the case of non-gaming activities, "net revenue" is defined as revenue left after deducting for cost of goods sold, but before an allowance for expenses

- (b) The tax rate for gaming and non-gaming activities shall be 5% of all net revenues.
- (c) Payment to the Tribe shall be on a quarterly basis starting April 1, 2000 for the quarter starting January 1, 2000.

SECTION 7. FUEL

- (a) Notwithstanding Sections 1 and 2(9), the Paiute Gas Station is required to pay sales tax to the Tribe on the sales of fuel to all customers. The term "fuel" shall include gasoline and diesel products. In addition, a tax shall be paid upon all personal property sold by the Paiute Gas Station in addition to fuel.

- (b) The tax rate for fuel sales shall be two cents per gallon. The tax on personal property other than fuel sold by the Paiute Gas Station shall be at the rate of 2%. The 2% shall be on net revenues received which shall be defined as gross sales revenue less cost of goods sold but prior to allowance for expenses.

- (c) Payment to the Tribe shall be on a quarterly basis starting July 1, 2000, for the quarter starting April 1, 2000.

SECTION 8. NOTICE

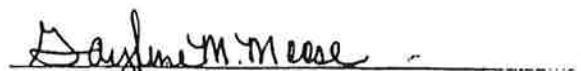
Whenever notice is required under this Ordinance, it shall be deemed given when personally delivered or deposited in the U.S. Mail with proper postage affixed thereto and addressed to the party to whom the notice is given as provided in an official statement of the party's address on file with the Tribe and the taxing authority. A taxpayer shall file its official statement of address with the taxing authority.

SECTION 9. EFFECTIVE DATE

This Ordinance as amended shall become immediately effective upon approval of the Tribal Council and shall remain in effect until otherwise changed by the Tribal Council.

The foregoing Ordinance No. 1 of 1999, as amended, passed and adopted this 24th day of November 1999, by the following vote: YES 4 NO 0 ABSENT 0


Monty Bengochia, Tribal Chairman


Tribal Secretary

