

2018

**AMENDED AND RESTATED COOPERATIVE AGREEMENT  
BETWEEN  
NEW MEXICO TAXATION AND REVENUE DEPARTMENT  
AND PUEBLO OF POJOAQUE TAX COMMISSION**

This Amended and Restated Cooperative Agreement is entered into by the New Mexico Taxation and Revenue Department (hereafter the "Department") pursuant to the authority granted by Section 9-11-12.1 NMSA 1978 (2010 Repl.), and the Pueblo of Pojoaque Tax Commission (hereinafter the "Commission") pursuant to the authority granted by Pueblo of Pojoaque Tribal Council Resolution No. 2018-040.

1. Purpose.

The Department and the Commission enter into this Agreement in order to provide for the exchange of information and the reciprocal, joint or common enforcement administration, collection, remittance and audit of gross receipts taxes of each party's jurisdiction.

2. Definition.

As used in this Agreement to following terms have the meanings stated:

"Class 1 Receipts" means receipts of a person other than a Pueblo of Pojoaque Entity that are (a) reportable to a location on Pueblo of Pojoaque Land, (b) are derived from the sale of goods or services to a Pueblo of Pojoaque Entity, and (c) are documented by the taxpayer to be exempt from the State Tax as provided by NMAC 3.2.4.7 and NMAC 3.2.4.9.

"Class 2 Receipts" means (a) receipts of a person other than a Pueblo of Pojoaque Entity that are (1) reportable to a location on Pueblo of Pojoaque land, (2) and are not Class 1 Receipts.

"Department" means the Taxation and Revenue Department, the Secretary of Taxation and Revenue or any employee of the Department exercising authority lawfully delegated to that employee by the Secretary.

"Commission" means the Pueblo of Pojoaque Tax Commission or any employee of the Commission exercising authority lawfully delegated to that employee by the Commission.

"Pueblo" means the Pueblo of Pojoaque

"Pueblo of Pojoaque Entity" means the Pueblo of Pojoaque; any political subdivision, agency or department of the Pueblo of Pojoaque; any incorporated or unincorporated enterprise of the Pueblo of Pojoaque or its political subdivision, agencies or department; any corporation required

to be considered a Pueblo of Pojoaque entity under Eastern Navajo Industries, Inc. v. Bureau of Revenue, 552 P.2d 805 (N.M.App. 1976); any business that is fifty percent or more owned by member(s) of the Pueblo of Pojoaque; or a member of the Pueblo of Pojoaque.

“Pueblo Tax” refers to the gross receipts tax imposed by Pueblo of Pojoaque Tribal Council Resolution No. 05-012, for so long as that tax remains a qualifying gross receipts, sales or similar tax as defined by § 7-9-88.1(B) NMSA 1978 (2010 Repl.).

“Receipts” means gross receipts as defined by § 7-9-3.5 NMSA 1978 (2010 Repl.).

“State Tax” refers to the Gross Receipts and Compensating Tax imposed by Chapter 7, Article 9 NMSA 1978 as amended from time to time during the period this Agreement is in effect, including any local option gross receipts taxes imposed by any political subdivision of the State of New Mexico.

3. Taxable Transactions Affected.

- A. This Agreement shall apply only to taxable transactions located on Pueblo of Pojoaque land, as shown on the attached map, and shall apply only to taxpayers who are not Pueblo of Pojoaque Entities. This Agreement shall not apply to the collection of any Pueblo Tax from a Pueblo of Pojoaque Entity. The Commission shall be solely responsible for the collection of the Pueblo Tax from Pueblo of Pojoaque Entities, and shall provide reasonable documentation to the Department upon request to confirm that the Pueblo Tax is being uniformly collected from Pueblo of Pojoaque Entities subject to the Pueblo Tax.
- B. Following its approval by all Pueblo and State agencies whose approval is required by the respective laws of each government, this Agreement shall apply to taxable transactions occurring on and after the date determined under NMAC 3.1.2.10.

4. Jurisdiction Not Altered.

- A. Nothing in this Agreement shall be construed as authorizing the State of New Mexico or the Pueblo of Pojoaque to tax persons or transactions that federal law prohibits that government from taxing, or as authorizing a state or pueblo court to assert jurisdiction over persons who are not otherwise subject to that court’s jurisdiction, or as affecting any issue of the respective civil or criminal jurisdiction of the State of New Mexico or the Pueblo of Pojoaque.
- B. Nothing in this Agreement shall be construed as an assertion or an admission by either the State of New Mexico or the Pueblo of Pojoaque that the taxes of one have precedence over the taxes of the other when the person or transaction is subject to the taxing authority of both governments. This Agreement shall be construed solely as a voluntary agreement between the two party governments

and shall not alter or affect the government to government relations between the State of New Mexico and any Indian nation, tribe or pueblo other than the Pueblo of Pojoaque.

- C. The Pueblo of Pojoaque has the exclusive authority to determine whether a natural person is, or is not, a recognized member of the Pueblo.

5. Administrative Agency.

The Department is designated as the administrative agency under this Agreement for the collection of the Pueblo Tax and the State Tax on Class 2 Receipts.

6. Administration of Pueblo Tax.

- A. The Commission hereby delegates to the Department all of the Commission's authority to administer and collect the Pueblo Tax on Class 2 Receipts as the Commission's agent while this Agreement is in effect, except as follows:
  - 1) Any proposed decision, determination or other action by the Department (other than extensions of time to file a return or pay the tax) affecting the liability of any non-Pueblo of Pojoaque Entity for the Pueblo Tax on Class 2 Receipts shall be submitted to the Commission for concurrence before the decision, determination or other action takes effect. The Commission shall determine, within thirty (30) days after receipt of the Department's proposal, whether the proposed decision, determination or other action complies with applicable pueblo law. The Department shall defer to and apply the Commission's interpretation of pueblo law. Failure of the Commission to respond to the proposed action within thirty (30) days after receipt shall constitute approval of the proposal.
  - 2) After all administrative proceedings within the Department are completed, as provided in this Agreement, the Commission shall be solely responsible for prosecuting any judicial proceedings for the collection of any delinquent Pueblo Tax pursuant to the remedies provided by the pueblo law.
- B. A taxpayer that is a Pueblo of Pojoaque Entity shall be exempt from all provisions of this Agreement and the Commission shall have the exclusive authority and obligation to administer and enforce the Pueblo Tax against a taxpayer that is a Pueblo of Pojoaque Entity. A taxpayer exempt from this Agreement under this subparagraph shall not be required to file any return to the Department concerning the Pueblo Tax or in any other manner shall be subject to the jurisdiction of the Department under this Agreement.

- C. The Commission shall be responsible for administering and collection the Pueblo Tax on Class 1 Receipts, and shall provide reasonable documentation to the Department upon request to confirm that the Pueblo Tax on Class 1 Receipts is being uniformly collected from non-Pueblo of Pojoaque Entities subject to the Pueblo Tax. The Department shall have the authority to require non-Pueblo of Pojoaque Entities to report their Class 1 Receipts to the Department as exempt from the State Tax.
- D. The Pueblo shall have the exclusive authority to determine under pueblo law whether any natural person is recognized by the Pueblo as a member of the Pueblo.

7. Taxpayer Identification.

- A. The Department and the Commission shall jointly develop and maintain systems for identifying taxpayers that are subject to taxation by both party jurisdictions and taxpayers that are subject to taxation by only one of the party jurisdictions.
- B. The Commission shall provide the Department a list of taxpayers who are Pueblo of Pojoaque Entities. The Commission shall assist the Department in identifying sales of goods and services by non-Pueblo of Pojoaque Entities to Pueblo of Pojoaque Entities, in order to identify transactions that are not subject to the State Tax.
- C. The Department shall accept as conclusive the Pueblo's determination whether a natural person is, or is not, a recognized member of the Pueblo. The status of the other taxpayers as a Pueblo of Pojoaque Entity or a non-Pueblo of Pojoaque Entity will be determined jointly by the Commission and the Department in accordance with the provisions of this Agreement.

8. Taxpayer Returns and Reports of Receipts.

- A. All non-Pueblo of Pojoaque Entities who have taxable Class 2 Receipts subject to this Agreement shall report those receipts to the Department on the CRS-1 Form maintained by the Department for reporting the State Tax, or on such other form(s) that the Commission and the Department jointly approve
- B. Any non-Pueblo of Pojoaque Entity maintaining a place of business on Pueblo of Pojoaque Land who has Class 2 Receipts subject to this Agreement shall be required to report its taxable gross receipts and deductions to the Department for each of the following tax districts in which the entity maintains a place of business ( business location):

District 1: Pueblo of Pojoaque Land located in Santa Fe County.

- C. A person's place or places of business (business location) shall be determined according to NMAC 3.1.4.13, including but not limited to the requirements that:
- 1) for persons engaged in the construction business, "place of business" includes each location at which construction is performed;
  - 2) for utilities, the physical location of the customer's premises or other place to which the utility's product or service is delivered to the customer is a "place of business" of the utility;
  - 3) for providers of telecommunication services (land line and mobile) the service location of the customer is the "place of business" of the service provider. The customer's service location is determined first by the customer's billing address on Pueblo of Pojoaque Lands, and if the customer does not have a billing address on Pueblo of Pojoaque lands or if the customer's billing address is a post office box or mail-drop, then the customer's service location is the street or rural address of the customer's residence or business facility on Pueblo of Pojoaque Lands; and
  - 4) A person selling or delivering goods or performing services or leasing tangible personal property used on Pueblo of Pojoaque Lands is required to report those receipts based on the tribal location of the sale or delivery of the goods or performance of the services or the use of the leased property rather than the person's business location.
- D. All non-Pueblo of Pojoaque Entities who have taxable Class 2 Receipts subject to this Agreement shall separately report to the Department, by appropriate code, the dollar amount of such receipts from a business location in District 1.

9. Allocation of State Tax and Pueblo Tax.

- A. Class 1 Receipts are subject only to the Pueblo Tax and shall be collected by the Commission. All of the gross receipts tax imposed on Class 1 Receipts shall be allocated to the Pueblo.
- B. Class 2 Receipts are subject to both the Pueblo Tax and the State Tax, and are subject to the reciprocal tax credits created by § 7-9-88 NMSA 1978 (2010 Repl.) and under the authority of Pueblo of Pojoaque Tribal Council Resolution No. 05-012. Seventy-five-percent of the gross receipts tax imposed on Class 2 Receipts shall be allocated to the Pueblo. Twenty-five percent of the gross receipts tax imposed on Class 2 Receipts shall be allocated to the

State. The tax allocated to the State shall be subject to proportional application against the amount of the gross receipts tax and local option gross receipts tax and against the amount of distributions of those taxes pursuant to Section 7-1-6.1 NMSA 1978.

10. Ownership of Money Collected.

Money collected by the Department on behalf of the Commission in accordance with this Agreement is not money of the State of New Mexico and shall be collected and disbursed in accordance with the terms of this Agreement, notwithstanding any other provision of law. Money collected by the Commission on behalf of the Department in accordance with this Agreement is not money of Pueblo of Pojoaque and shall be collected and disbursed in accordance with the term of this Agreement, notwithstanding any other provision of law.

11. Receipts and Disbursements.

All money received or collected by the Department pursuant to this Agreement shall be deposited with the State Treasurer and credited to the tax administration suspense fund as provided by the New Mexico Tax Administration Act. Deposits of money consisting of Pueblo Tax, less the administrative fee provided in paragraph 16, shall be disbursed to the Commission by the end of the month following the month in which the tax was collected.

12. Assessment and Protest Procedures.

- A. An assessment of Pueblo Tax against the Pueblo of Pojoaque Entity shall be issued solely by the Commission and is not subject to the provision of this Agreement.
- B. An assessment of Pueblo Tax against a non-Pueblo of Pojoaque Entity on Class 1 Receipts shall be issued solely by the Commission.
- C. An assessment of Pueblo Tax and/or State Tax against a non-Pueblo of Pojoaque Entity on Class 2 Receipts shall be issued by the Department for the Department and the Commission. The assessment shall inform the taxpayer of the remedies available to the taxpayer under Pueblo law and this Agreement as to the assessment of Pueblo Tax and shall inform the taxpayer of the remedies available to the taxpayer under State law as to the assessment of State Tax.
- D. Any abatement of assessment of Pueblo Tax, and any closing agreement, compromise or installment payment agreement concerning any liability for Pueblo Tax proposed by the Department must be approved in advanced by the Commission. The Department shall submit the proposed action to the Commission in writing, and the Commission shall have thirty (30) days after receipt of the proposed action to adopt

or reject the proposal. Failure to take any action within the thirty (30) day period shall constitute approval of the proposed action.

- E. A taxpayer that is a non-Pueblo of Pojoaque Entity may dispute the assessment to it of any amount of Pueblo tax on Class 2 Receipts or the application to the taxpayer of any provision of this Agreement or the application of the Pueblo Tax on Class 2 Receipts by filing with the Department a written protest as provided in § 7-1-24 NMSA 1978 and applicable regulations of the Department.
- F. The Department is authorized to process a protest filed under subparagraph 12(D) of this Agreement by a non-Pueblo of Pojoaque Entity according to the procedures established by § 7-1-24 NMSA 1978, provided that the Department's Hearing officer shall have no authority to issue a decision on the protest. The Hearing Officer shall make a recommended decision for adoption, modification or rejection by the Commission. The Commission shall, within thirty (30) days of receipt of the recommended decision, inform the protesting taxpayer of the Commission's decision, the requirements for perfection of an appeal, and the consequences of failure to appeal. Any appeal from the decision of the Commission shall be as provided in Pueblo law.
- G. If a protest raises only issues of pueblo law and does not raise any issue of state law, the Department may refer the protest directly to the Commission for decision, without making any recommendation.

13. Claims for Refund.

- A. Any person who believes that an amount of tax subject to this Agreement on Class 2 Receipts has been paid by or withheld from that person in excess of that for which the person was liable or who has been denied any credit or rebate claimed may claim a refund as provided in § 7-1-26 NMSA 1978 and the Department's regulations under that statute.
- B. The Department is authorized to process a claim for refund of Pueblo Tax filed under subparagraph 13(A) of this Agreement by a non-Pueblo of Pojoaque Entity according to the procedures established by § 7-1-26 NMSA 1978, provided that the Department shall not make any decision on the claim. The Department shall make a recommended decision for adoption, modification or rejection by the Commission. The Commission shall, within thirty (30) days of receipts of the recommended decision, inform the claimant of the Commission's decision, the requirements for perfection of an appeal, and the consequences of failure to appeal. Any appeal from the decision of the Commission shall be a provided in Pueblo law.

- C. In response to a claim for refund made as provided in this Agreement but before any court acquires jurisdiction of the matter, the Commission may authorize the refund to a person of any overpayment of Pueblo Tax determined by the Commission to have been erroneously paid by the person. The Commission shall be solely responsible for issuing any such refund, from funds of the Commission. In the discretion of the Commission, any amount of Pueblo Tax due to be refunded may be offset as a credit against any amount of Pueblo Tax for which the person due the refund may be liable.
- D. If a claim for refund raises only issues of pueblo law and does not raise any issue of state law, the Department may refer the claim directly to the Commission for decision, without making any recommendations.

14. Levy and Collection of Delinquent Pueblo Tax.

The Department shall be solely responsible for the collection of delinquent State Tax pursuant to state law through levy or other procedures. The Commission shall be solely responsible for the collection of delinquent Pueblo Tax pursuant to pueblo law through levy or other procedures.

15. Confidentiality of Information.

No employee or former employee of the Department or of the Commission shall disclose to any individual other than another employee of the Department or of the Commission any information contained in the return of any taxpayer relating to taxes subject to this Agreement, or any other information about any taxpayer acquired as a result of his employment by the Department or the Commission except to the extent that employees of the Department are authorized to disclose such information by applicable pueblo law. This Agreement constitutes a reciprocal agreement between the Department and Pueblo of Pojoaque for the exchange of confidential taxpayer information for purposes of Section 7-1-8.6 NMSA (2010 Repl.). Any exchange of confidential taxpayer information between the Department and the Commission pursuant to this Agreement shall be for tax purposes only.

16. Funding.

As compensation for all services provided by the Department under this Agreement, the Department shall retain a sum equal to the following percentage of the total Pueblo Tax, including interest and penalties, received or collected by the Department as agent for the Commission pursuant to this Agreement: the percentage currently charged to counties at the time such compensation is retained, but not to exceed three and six tenths percent (3.6%).



17. Term.

This Agreement shall become effective when executed by the Department and the Commissions and shall thereafter apply to taxable transactions as provided in subparagraph 3(B) of this Agreement. This shall continue in effect for a period of ten (10) years unless earlier terminated as provided in paragraph 18. This Agreement shall automatically be extended for additional consecutive ten (10) year terms, subject to earlier termination as provided in paragraph 18, unless the Department or the Commission notifies the other party, not more than twelve months and not less than six months prior to the end of the then current term that the Agreement will not be extended beyond its then current term.

18. Termination.

- A. If either party concludes that the other party has failed to perform its obligations under this Agreement, it may notify the other party in writing of the basis for the alleged default. If the dispute is not resolved within thirty (30) days after the written notice of default is received, the dispute shall be resolved through arbitration as provided in paragraph 20.
- B. If either party concludes that an intervening change in federal, state or pueblo law [including but not limited to changes in the Pueblo Tax that render it not a qualifying gross receipts, sales or similar tax as defined by § 7-9-88.1(B) NMSA 1978 (2010 Repl.)] has materially altered the purpose and effect of this Agreement, it shall notify the other party of its intent to terminate this Agreement based on that material change in law. Both parties will attempt in a good faith to resolve the matter following receipt of the written notice of intent to terminate. If the notice of intent to terminate is not withdrawn within one-hundred twenty (120) days after the notice is given, this Agreement shall automatically terminate on the 121<sup>st</sup> day, subject to final audit and payment of any funds of one party held by the other.

19. Records and Audit.

Each party shall permit the other party to inspect and audit all data and records relating to its performances under this Agreement. This right to inspect and audit shall continue for a period of one (1) year following the termination or expiration of this Agreement for any reason.

20. Dispute Resolution.

- A. All disputes and controversies of every kind and nature between the parties to this Agreement as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation or breach of this Agreement

shall be submitted to arbitration pursuant to the procedures set forth herein.  
Termination under paragraph 18 (B) shall not be subject to arbitration.

- B. Either party may demand arbitration in writing, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter in controversy.
- C. Within (20) days after such written demand, the other party shall name its arbitrator, or in default of such naming, such arbitrator shall be named by the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within twenty (20) days or, in lieu of such agreement on a third arbitrator by the two arbitrators so appointed, a third arbitrator by the two arbitrators so appointed, a third arbitrator shall be appointed by the Federal District Court for the District of New Mexico. In the event said Court fails to appoint a third arbitrator within thirty (30) days of the request therefore, the appointment shall be made by the American Arbitration Association.
- D. The arbitration cost and expenses of each party shall be borne by that party and all arbitrators' fees and other expenses shall be borne equally by both parties.
- E. The arbitration hearing shall be held at such time and place as designated by the arbitrators on at least twenty (20) days written notice to the parties.
- F. An award rendered by a majority of the arbitrators appointed pursuant to this Agreement shall be final and binding on all parties to the proceeding, and the parties hereto agree to be bound by such award.
- G. As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written agreement signed in advance of the hearing, the parties shall follow the commercial Arbitration Rules of the American Arbitration Association.
- H. The parties stipulate that the arbitration provisions of this Agreement shall be a complete defense to any suit, action or proceeding instituted in any federal, state or tribal court or before any administrative tribunal with respect to any controversy or dispute arising between the parties the time this Agreement is in effect and which is arbitrable as set forth in this Agreement. The arbitration provision of this Agreement, shall, with respect to any controversy or dispute, survive the termination or expiration of this Agreement.
- I. Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

J. Failure by either party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by the other party or failure by either party to comply with the arbitration award shall amount to a material breach of this Agreement and shall entitle the party who demanded arbitration to cease performance of any obligation set forth in this Agreement at the sole discretion of that party.

K. This Agreement is not subject to enforcement under the New Mexico Uniform Arbitration Act (Sections 44-7-1 through 44-7-22 NMSA 1978).

21. Amendment.

This Agreement shall not be altered, changed or amended except by written instrument executed and approved by the parties hereto.

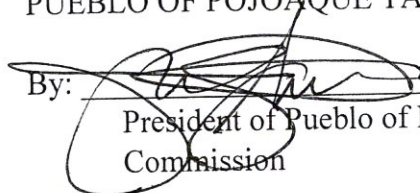
APPROVED AND EXECUTED on the date indicated below.

NEW MEXICO TAXATION AND REVENUE  
DEPARTMENT

By:   
Secretary of Taxation and Revenue

Date: 4/20/18

PUEBLO OF POJOAQUE TAX COMMISSION

By:   
President of Pueblo of Pojoaque Tax  
Commission

Date: A. 20. 2018

Approved by Pueblo of Pojoaque Tribal Council  
Resolution No. 2018-040