



PUEBLO OF POJOAQUE

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October 27, 2017

Elizabeth Appel, Director
Office of Regulatory Affairs & Collaborative Action
Bureau of Indian Affairs
U.S. Department of the Interior
1849 C Street, NW, Mailstop 3642-MIB
Washington, DC 20240

Re: BIA-2016-0007

Dear Director Appel:

I write on behalf of the Pueblo of Pojoaque (Pueblo) and in support of the Department of the Interior's efforts to modernize the Department's regulations at 25 C.F.R. Part 140. The Pueblo of Pojoaque believes modernized 25 C.F.R. Part 140 regulations are in the best interest of Indian tribes and the Department as trustee, and will provide more certainty to Tribes, states and local counties with respect to commerce in Indian country.

The Pueblo is one of the six Tewa-speaking Rio Grande Pueblos and was first inhabited as early as 500 AD. It is one of nineteen pueblos in New Mexico that was influenced and impacted by the Spaniards who traveled up El Camino Real starting in 1598. Today, the Pueblo has a little more than 500 tribal members and owns Buffalo Thunder Development Authority (BTDA), a political subdivision and unincorporated instrumentality of the Pueblo which holds its gaming enterprises. The Pueblo also owns Pueblo of Pojoaque Enterprise Corporation (PPEC) which is engaged in additional commercial activities such as a hotel, a RV park, two gas stations, a supermarket, a hardware store, an apartment complex, a mobile home park, a bowling alley, a storage unit facility, and vacation rentals.

Any profits generated from these ventures, as well as any tax revenue collected, is used to provide essential governmental services to tribal members, their families, residents, employees, as well as to the non-Indian community within the greater Pojoaque Valley. These services include law enforcement; fire, rescue, and other life-safety emergency services; utility, water and infrastructure development and maintenance; and community health and wellness services to families and at-risk youth, elders and community members through such entities as the Pueblo's Wellness Center, Healing Arts Program, Public Library, and the Boys & Girls Club to name a few.

25 U.S.C. § 262 states “Any person desiring to trade with the Indians on any Indian reservation shall...be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians.” This broad statutory authority provides the Department the regulatory discretion to speak clearly in support of tribal self-governance over commerce occurring in Indian country. In other words, the Department can modernize its regulations to reflect current practice where tribal civil regulatory authority is recognized to be at its zenith within Indian country. In addition, the Department is authorized to address dual taxation, an issue that has handicapped tribal governments through a series of common law decisions made which allow states to intrude on tribes’ sovereign tax base.

In New Mexico, many tribes including the Pueblo have entered into cooperative agreements for gross receipts taxes with the State in order to remove many of the negative effects of dual taxation. However, these agreements only allow the tribes to keep 75% of the tax revenue generated on their lands while the State retains the remainder. Additionally, and of great concern, is the fact that the State is free to terminate these agreements at any time thereby leaving the tribes and anyone doing business on tribal land in an extremely unpredictable and tenuous position. This contravenes two key fundamental concepts of good tax policy—providing certainty and promoting economic growth and efficiency—which don’t exist if New Mexico can terminate its cooperative agreements with tribes at any time. In essence, therefore, the dual taxation issue has not really been solved and New Mexico’s tribes need a more permanent and favorable solution.

Addressing dual taxation is extremely important and further justified since state governments provide few services on Indian reservations, but impose taxes on natural resources, retail sales, and personal property (e.g. wind energy-generating facilities). Dual taxation effectively undermines the Constitution’s promise of respect for tribal sovereignty, and keeps Indian reservations the most underserved communities in the nation.

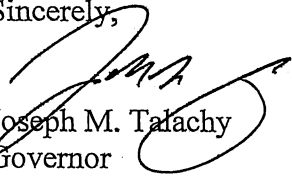
For these reasons, we support modernized Indian Trader Regulations at 25 C.F.R. Part 140 which declare:

- 1) “Any person or business desiring to trade with the Indians on any Indian reservation shall be permitted to do so under the laws of the tribal government.”
- 2) “Trade and business activity on trust or restricted fee lands is not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision.”

Tribal governments are taking on increasing levels of government responsibility, but receive inadequate federal funding for roads, schools, police and all government services. Through its proposal to modernize the Indian Trader Regulations, the Department has an opportunity to end centuries of dishonorable commercial dealings, fulfill trust responsibilities, and create a revenue base for tribal governments.

In addition, tax, regulatory, and service agreements with states and local governments would be encouraged but not required. For all of the aforementioned reasons, the Department should take the next step. Initiating a regulatory process will send a strong message to states and local governments that they must deal fairly on taxes and services. If you have any questions or concerns, please contact me at governor@pojoaque.org or at (505) 629-6659.

Sincerely,



Joseph M. Talachy
Governor