

ORDINANCE NO. 17-02

AN ORDINANCE OF THE BLUE LAKE RANCHERIA ADOPTING A TRIBAL SALES TAX ON FOOD PURCHASED FOR ON-RESERVATION CONSUMPTION

ORDINANCE NO. 2017-002

The Tribal Business Council of the Blue Lake Rancheria hereby ordains as follows:

Section 1. Policy

This Ordinance is adopted by the Tribal Business Council, pursuant to its authority granted under the Tribe's Constitution in Article VI, Section 2(e.) and (h.) to impose on the sale of food purchased for on-reservation consumption a tribal sales and use tax at the rate established by the State of California for a sales and use tax on food purchased for on-premises consumption.

Section 2. Sales Tax

There is hereby imposed a tribal sales tax on the sale of food or beverages purchased for on-reservation consumption ("taxable property") at the rate established by the State of California for the sales and use tax imposed by the Bradley-Burns Uniform Local Sales and Use Tax Law (Cal. Revenue and Taxation Code ("R&T Code") Section 7200 et seq.) and any local Transaction and Use Tax adopted pursuant to Division 2, Parts 1.6 or 1.7 of the R&T Code. The tax is imposed on the Consumer but is required to be collected by the Business doing business on the reservation that sells taxable property to the Consumer. The sales tax rate shall be the highest combined rate under the Bradley-Burns Uniform Sales and Use Tax Law and any local Transaction and Use Tax adopted by any city in Humboldt County or the county itself.

Section 3. Definitions

1. "**Business**" means any Person engaged in an activity of selling goods or providing services in an attempt to make a profit.
2. "**Consumer**" means any Person who purchases taxable property for personal use and not for resale from any Business where the purchase occurs on the Reservation.

For purposes of this Section, a purchase of taxable property occurs on the Reservation when taxable property is purchased from a Business physically located on the reservation.

3. **“On-Reservation Consumption”** means food or beverages purchased from an on-reservation eating or drinking establishment, such as a bar or restaurant, unless it can be shown by clear and convincing evidence that the food or beverages were purchased for off-reservation consumption.
4. The term **"Person"** includes, but is not limited to, any individual, firm, general partnership, limited partnership, joint venture, association, social club, fraternal organization, corporation, limited liability company, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee 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 any other group or combination acting as a unit.
5. **"Purchase"** means and includes acquisition by a Consumer of title to or possession of taxable property for consideration either immediate or deferred.
6. **"Reservation"** means the Blue Lake Rancheria, including lands within the boundaries of the Rancheria and any other lands held in trust by the United States of America for the Tribe.
7. **"Sale" or "sold"** means and includes transferring title or possession of taxable property to a Consumer for consideration either immediate or deferred.
8. **"Sales price"** means the total price that is charged to the Consumer for the sale of taxable property by the Business seller, whether paid, in whole or in part, immediately or later.
9. **“Taxable property”** means food or beverages purchased from an on-Reservation

eating or drinking establishment, such as a bar or restaurant, for on-reservation consumption.

10. "**Sales tax**" means the tax imposed by Section 2 of this ordinance.
11. "**Tribal Taxing Authority**" or "**Authority**" means the Blue Lake Rancheria Tribal Business Council.
12. "**Tribe**" means the Blue Lake Rancheria of California, a federally recognized Indian tribe.

Section 4. Returns

1. Any Business subject to sales tax shall report all sales subject to the tax to the Tribal Taxing Authority as provided 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 prescribes by regulation as authorized by Section 6 of this Ordinance.

Section 5. Payment

Each Business shall pay sales tax to the Tribal Taxing Authority upon demand of the 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 a sales tax against any monies 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 sovereign immunity of the Tribe, its tribal government or the Tribal Taxing Authority.

Section 6. Tribal Taxing Authority

1. Authority. The Tribe hereby establishes the Tribal Business Council in accordance with Section 3, subsection 10, to act as the Tribal Taxing Authority to administer and enforce provisions of this Ordinance pursuant to this Section 6.
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 that said officials have the right to assess and collect sales taxes according to regulations adopted by the taxing 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.
The regulations shall, at a minimum:

- i. 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 for the Tribe.
- ii. Protect the taxpayer from paying both state sales tax with respect to the same sale by providing a procedure whereby the taxpayer can establish to the satisfaction of the taxing authority that it 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 demanded payment of the sales tax with respect to the sale. If the taxpayer makes such a showing within reasonable time limits established by taxing authority regulations, the taxing authority, at its option, shall waive the tribal sales tax, refund the tax if already collected or enter an agreement with the taxpayer under which the taxpayer assigns its rights to the taxing authority and the taxing 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

- iii. Provide that all sales tax collected by the taxing authority shall be deposited in a separate interest bearing account to the credit of 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 decision of the taxing authority with respect to the sale has expired or final decisions of the taxing 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 the challenge is finally resolved in favor of the taxing authority.

- c. The Tribal Taxing Authority shall have the authority to levy liens on funds in the possession of any agency or subdivision of the tribal government, including, but not limited to, the SIRHA, which are due or become due to the taxpayer. Such liens may only be imposed after completion of the procedures required by subsection 2b.i of this Section. 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 Business Council. Said agency or subdivision shall send notice of the levy to the taxpayer within five (5) working days of its receipt.

- d. 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 taxing authority's sovereign immunity from suit or subject the taxing authority or the Tribe to any cross-claim, counter-claim, third party claim, or other

countersuit.

Section 7. Effective date

This ordinance shall become effective upon the date of approval by the Tribal Business Council and shall remain in effect until amended or repealed.

CERTIFICATION

We, the undersigned Tribal Chairman and Secretary/Treasurer, hereby certify that the Blue Lake Rancheria Tribal Sales Tax Ordinance was amended and adopted by the Blue Lake Rancheria Tribal Business Council at a duly called meeting with a quorum present held on June 5, 2017, by a vote of 4 for, 0 against, 0 abstaining and 1 absent.

ATTEST;

Art Ramsey
Secretary/Treasurer


Ms. Claudia Brundin
Tribal Chairperson