

Pueblo of Isleta
Design/Construction Tax Guidance
May 23, 2024

This guidance does not constitute Tribal Law and has not been adopted by the Tribal Council. Rather, this guidance provides the Pueblo of Isleta’s Treasurer’s interpretation of the Pueblo’s Design/Construction Tax Law for purposes of both ensuring uniform application by the Pueblo and providing transparency to vendors. This guidance will be updated regularly, with a record of such updates provided in the final section.

On September 26, 2023, the Pueblo of Isleta Tribal Council adopted Res. No. 2023-075, which created a new Tribal tax of 6.4% for all construction materials and services for construction projects within the Pueblo of Isleta unless an exemption applies. The Tribal Council has earmarked revenue generated from the new tax for future infrastructure projects.

While this guidance may be used by Pueblo of Isleta department directors and by vendors, vendors are most likely to find the following sections to be useful for their purposes:

- 1.5 - Additional Questions
- 2 - Applicability
- 3 - Exemptions
- 4.2 - Registration/Billing Procedures
- 4.5 - Tax Certifications

1. GENERAL

1.1 Where can I find the new Design/Construction Tax Law?

The new Design/Construction Tax is codified in the Pueblo of Isleta Law and Order Code at Section 04-06-01 through 04-06-08. In the Resolution adopting this new tax, Tribal Council codified all existing tax laws in Title 4 of the Law and Order Code. Thus, you can now see all of the Pueblo’s tax laws in Title 4 –

Chapter 1 is the Enterprise Sales Tax;

Chapter 2 is the Cigarette Tax;

Chapter 3 is the Lodger’s Tax;

Chapter 4 is the Gas Tax;

Chapter 5 is the Internet Sales Tax; and

Chapter 6 is the Design/Construction Tax.

The Pueblo of Isleta Law and Order Code is available at:

<https://www.isletapueblo.com/government/tribal-council/poi-regulations-ordinances-standards/>

1.2 What process was followed to adopt the tax and what opportunities were provided to comment?

The Tribal Council's Law & Order Code Subcommittee identified the POI departments most likely to be impacted by the tax. Those departments were provided with three months notice that this tax was being considered and were asked to provide feedback. This includes: the Isleta Health Center, Public Works, the Casino, Design and Construction, the Isleta Pueblo Housing Authority, Transportation, the Treasurer's Office, and the Broadband Program. A draft of the legislation was first sent to this group by email in mid-June 2023, followed by an in-person meeting. The Health Center, Transportation, Isleta Pueblo Housing Authority, Broadband Program, and the Treasurer's Office offered comments. Other invited departments did not attend and/or did not comment.

On July 18, 2023, a revised draft of the tax legislation was provided to the Isleta Health Center, Public Works, the Casino, Design and Construction, the Isleta Pueblo Housing Authority, Transportation, the Treasurer's Office, and the Broadband Program. An in-person comment session was thereafter held by the Tribal Council's Law and Order Code Subcommittee on July 31, 2023. The Health Center and Transportation joined that meeting for comment. The Health Center also provided written comments.

Thereafter, at the direction of the Subcommittee, the Governor's Office requested information from every department about pending construction projects to determine the impact of this tax. Some departments responded. Those responses were considered by the Subcommittee prior to its recommendation to Tribal Council.

The Tax was adopted by Tribal Council on September 26, 2023 in a public meeting.

1.3 When did the tax go into effect?

January 1, 2024.

1.4 When does the tax expire?

The Tribal Council did not adopt a sunset date for this tax. It will only expire upon legislative amendment by the Tribal Council.

1.5 Who do departments contact with questions about the tax or this guidance?

Department directors with questions about this guidance or about the tax generally should send those questions to: poitax@isletapueblo.com. Upon receipt of those questions, the Treasurer and Legal Department will meet and provide a response.

Vendors with questions should first contact the contracting department director. The director will determine whether or not to submit the vendor's question to the Treasurer for review.

2. APPLICABILITY

2.1 What does the new Design/Construction Tax apply to?

To determine whether a transaction is taxable under the new law, you must consider:

- Whether the transaction is for a construction material or service, as defined by the law. See *Section 2.6 - What constitutes taxable construction?* and *Section 2.7 - What constitutes non-taxable routine maintenance?*
- If so, whether the transaction is exempt from the tax. See *Section 3 - Exemptions*.

Note that a transaction may constitute construction under the new law, but may nonetheless be exempt from the tax.

For example, IPHA may build a community park within a new residential development area, which would meet the definition of taxable construction. However, because IPHA is exempt from the tax, the transaction would not be taxable. As another example, Public Works may build utilities to individual households, which would meet the definition of taxable construction. However, because construction benefiting individual households is exempt, the transaction would not be taxable.

2.2 Will the tax apply to projects presently under contract?

Yes, all non-exempt construction work performed after January 1, 2024 is taxable, even if that work was performed pursuant to a contract executed prior to the Tribal Council's adoption of the tax. Tribal Law supersedes contract terms.

However, because the new tax cost was not contemplated in the original contract or bid, a department director may decide that the funding source, rather than the vendor, should cover the

cost. *See Section 4.1 - How will the new tax be paid?* To ensure that a contract memorializes the department director's decision on tax responsibility, consult with the Legal Department.

2.3 Will the tax apply to projects presently being considered for bid, even if the RFP failed to mention the tax?

Yes, all non-exempt construction work performed after January 1, 2024 is taxable. Tribal Law supersedes RFP terms.

It is within a department director's discretion to determine whether the vendor or Pueblo should be responsible for costs of the Design/Construction tax. Where the new tax cost was not contemplated in the original RFP, a department director may decide that the funding source, rather than the vendor, should cover the cost. *See Section 4.1 - How will the new tax be paid?* The contract must memorialize the department director's decision on this. To make sure the contract does so, consult with the Legal Department.

2.4 Does this tax replace the NM Gross Receipts Tax for construction vendors?

No. Some transactions that are taxed under the Pueblo's Design/Construction Tax may also be taxed under the State Gross Receipts Tax. Examples could include:

- Design services on a construction project contemplated on Pueblo lands, where the design firm completes the majority of their work outside of the Pueblo;
- Environmental assessment services for a construction project contemplated on Pueblo lands, where some of the environmental work is completed outside of the Pueblo.

At the same time, many transactions related to construction projects within the Pueblo would be exempt from the New Mexico Gross Receipts tax, regardless of whether the Tribal Design/Construction Tax applies.

The Pueblo of Isleta is unable to provide vendors with any advice on their state tax responsibilities. The vendor must engage their own legal and accounting professionals for that advice.

2.5 Are professional construction services, like architecture and design, subject to the Tribal tax if the work is completed in an office location outside of the Pueblo?

Yes. The Pueblo Design/Construction Tax applies to any non-exempt construction services and materials, including design and architecture services, related to a construction project located (or intended to be located) on Pueblo lands. If a building is to be constructed on Pueblo lands, then

any design services relating to that project is subject to the Tribal tax, even if the work is performed outside of the Pueblo.

2.6 What constitutes taxable construction?

The law defines taxable construction as any of the following, unless an exemption applies:

- The building, altering, or demolishing of any structure or utility;
- Any material used as an ingredient or component part of any building of any structure or utility;
- Design, architecture, drafting, surveying, engineering, environmental and structural testing, security, sanitation and any other services required to comply with governmental regulation of the underlying construction project. However, general business services relating to the construction, including legal, accounting, realtor, and equipment maintenance services, do not constitute taxable construction.

The Treasurer will consider the following when determining whether a transaction constitutes taxable construction:

- Whether the work relates to the functionality of a building or utility;
- Whether the work relates to a permanent affixture to a building or utility;
- Whether the work constitutes routine maintenance rather than a permanent alteration (*see 2.7 - What constitutes non-taxable routine maintenance*).

For example:

Taxable Construction	Non-Taxable Non-Construction/Materials/Services
The addition of a functional component of a building, even if it is artistic/creative in nature	Artwork, even if affixed and/or created from traditional construction materials (i.e. metalwork, stonework), as long as it has no functional purpose for the building
Digging a trench to lay utility lines	POI's purchase of equipment, including construction equipment
Installing a new wall that is permanently affixed to a building	Adding a temporary divider between office spaces, if such divider is not affixed
	Upgrading IT systems within a facility

	Installation of equipment, like a security system, that is not permanently affixed to a facility
	Purchases of furniture
	Purchases of window treatments
	Routine maintenance (<i>see 2.7 - What constitutes non-taxable routine maintenance</i>)

2.7 What constitutes non-taxable routine maintenance?

Permanent alterations that materially increase the value and useful life of a facility constitutes taxable construction. However, routine maintenance does not.

For example, the following alterations constitute construction, rather than routine maintenance, and thus should be taxed under the new law:

Taxable - Permanent Alterations

- Facility upgrades that are permanently affixed to the building and that significantly improve the facility’s value
- Restorations or renovations that the bring the property to a “like-new” condition
- Total replacement of the entirety or majority of a facility’s parking lot or sidewalk
- New landscaping or total replacement of existing landscaping
- Landscaping or structures for erosion control
- Total replacement or materials-upgrade of a portion of a road greater than a size of ¼ mile, unless the roadwork is secondary to routine utilities maintenance (i.e. tearing up and replacing road in order to access underground utilities for routine maintenance purposes shall not constitute taxable construction)
- Total replacement or materials-upgrade of a portion of an irrigation ditch or culvert;
- Alterations that change the floorplan of the building (i.e. new walls or moving walls)

On the other hand, the following alterations constitute routine maintenance that should not be taxed under the new law, because they do not constitute permanent alterations:

Not Taxable - Routine Maintenance

- Incidental repairs and/or building upkeep (i.e. replacing a light bulb)
- Replacing a portion of existing landscaping
- Work to restore the building to its previous and usable condition, but not a “like-new,”

- condition (i.e. painting one room in the building)
- Alteration that brings a component of a building/facility/utility back into working condition, as opposed to one that upgrades the entire building/facility/utility
- Repairs that cure a defect within the building without upgrading the facility beyond its original state

For instance, installing a new roof would constitute construction, and thus would be taxable. The roof would substantially improve the useful life and value of the building and would be permanently affixed to the structure itself. By contrast, re-painting a wall within a building would constitute routine maintenance, as such work would not upgrade the building beyond its original state and would not substantially increase the building’s value.

Taxable Construction	Non-Taxable Routine Maintenance
New roof	Patching an existing roof segment to repair it
Replacement of an entire elevator system	Replacement of one elevator cable
Replacement of the entire HVAC system of a POI facility	Replacement of a heater part necessary to repair the heating unit
Replacement or upgrade to POI’s entire cable/broadband network	Replacement of a portion of switches within POI’s cable/broadband network, where the replacement switches are not an upgrade and simply restore the system to a usable, rather than a like-new, condition
Total replacement of internal electrical wiring in a street light/traffic signal, using upgraded wiring materials	Servicing traffic signals, including bulb replacements or repairs to a component damaged by a storm
Upgrading a transmission line to increase voltage to POI-owned facilities	Replacing a wire or component of an existing transmission line to bring it into its original state, but not upgrading those lines
Transportation of materials/fill to new road construction site	Transportation of materials/fill to site for routine repair of a road
Material for new road construction site	Material for routine repair of a road
A contractor’s equipment rental costs for a new road construction site	A contractor’s equipment rental costs of routine repair of a road
Installation of new or upgraded water	Replacing components of an existing water

filtration system	filtration system in a manner that does not upgrade that system from its original state
Entire fence replacement (or replacement of majority portion of fencing area) or upgrade of materials	Repairing a portion of fence/gate, including control box for automatic gate
Testing or sampling environment for purposes of building new infrastructure (i.e. Chical well - site drilling to test water depth and water quality)	Testing or sampling current infrastructure as a part of routine monitoring or maintenance (i.e. testing current drinking water systems for compliance with federal standards)
Replacement of a large portion of a road in order to upgrade that road	Filling a pothole; Demolition/replacement of a portion of road in order to access underground utilities for routine maintenance
Replacing an entire building's flooring with upgraded, higher-priced materials (i.e. from carpet to tile)	Replacing an entire building's carpet with similarly valued flooring (i.e. replacing carpet with similar carpeting, or with similarly priced vinyl/linoleum).
Replacing all of a building's doors with upgraded doors (i.e. contractor grade doors replaced with security doors)	Repairing or replacing one door in a building with a similar door
Expanding on existing construction - i.e. constructing an addition to an existing facility or expanding a parking structure	Routine maintenance of an existing structure
Landscaping an area not previously landscaped	Replacing a couple of trees in pre-landscaped areas
Re-paving entire parking lot	Upgrading a portion of a sidewalk with new material (rubber coating)
Constructing new fiber lines or upgrading existing communication lines (cable) with fiber	Replacing a segment of existing fiber lines with fiber, including the trenchwork/boring required to do so
Installing upgraded windows	Cleaning a facility's windows

2.8 What activities are taxable when a portion of the construction occurs outside of the Pueblo, but other portions are completed within the Pueblo. For instance - a modular

building manufactured outside of the Pueblo but thereafter permanently affixed within the Pueblo.

Only the portions of the transaction connected to construction within the Pueblo would be taxable. In the example provided, the purchase of the modular building itself would not be taxable. However, any non-exempt activities relating to its permanent affixture within the Pueblo is taxable construction, including: building and affixing to a foundation; connecting to utilities; adding or altering walls within the structure itself once moved to the Pueblo.

For example, if a Tuff Shed were purchased to set up on (but not permanently affix to) the Casino's parking lot, that transaction would not be taxable under the Pueblo's Design/Construction tax because the Tuff Shed would be constructed entirely outside of the Pueblo and there would be no construction activities within the Pueblo, such as installation, to tax.

However, if a prefabricated bus stop shelter is purchased to permanently affix to land within the Pueblo, portions of that transaction will be taxable under the Pueblo's Design/Construction tax. The purchase of the bus stop shelter itself would not be taxable because it would be constructed entirely outside of Pueblo lands. However, if the Pueblo were to contract out the construction work needed to permanently affix that shelter to Pueblo lands, that portion of the transaction would be taxable.

3. EXEMPTIONS

Even if an activity constitutes taxable construction under the law's definition, it may nonetheless be exempt from the tax under the law. Some exemptions are based on the identity of the purchaser (i.e. construction purchases by the Isleta Pueblo Housing Authority, the Isleta Health Center, and individual tribal Members are all exempt). Other exemptions are based on the identity of the entity doing the construction work (i.e. all construction performed directly by a governmental entity, including construction performed in-house by Pueblo of Isleta staff, is exempt). Still other exemptions are based on the identity of the beneficiary of the project (i.e. all construction projects contracted by the Pueblo to benefit an individual Tribal Member household are exempt). This section explains the law's exemptions.

3.1 What is exempt from the tax?

The law exempts the following construction transactions from the tax:

- Construction purchases by individuals. If a Tribal Member hires someone to renovate their home, for example, the transaction will not be taxed
- Construction purchases by the Isleta Health Center

- Construction purchases by the Isleta Pueblo Housing Authority
- Construction purchases by the Pueblo that directly benefit an individual member, such as asbestos abatement or waste-water hookups at a Tribal Member’s home
- Legal and accounting costs relating to a construction project
- Projects in areas deemed by the Council and Governor to be imperative to economic development within designated “qualified opportunity zones”

Note that IPHA and the Health Center are the only Pueblo of Isleta entities exempt from the tax. Construction purchases by any Pueblo of Isleta Department, the Isleta Resort & Casino, and the Isleta Convenience Stores are taxed, unless otherwise exempt.

3.2 Exemption: “Design/Construction Materials and Services purchased by the Pueblo of Isleta for the direct benefit of an enrolled member’s residence or property.”

The following chart provides examples of construction transactions that fall under this exemption (and thus that are not taxable), and other construction transactions that do not (and thus that are taxable).

Taxable Construction	Construction that is exempt from the tax
Construction or repair work to cultural sites and traditional dwellings used for public purposes	Construction or repair work to an individual’s home
ADA-compliant repair work to the Pueblo’s assisted living facility	ADA-compliant repair work to an individual member’s home
Asbestos abatement to Pueblo facilities	Asbestos abatement to a Tribal Member’s home
Demolition of a condemned nuisance-home, where the demolishment provides a community benefit	An individual Tribal Member’s demolition of his home in order to build a new home
Construction of utility service trunk lines that benefit multiple homes or the community at large	Construction of utility service lines directly to Tribal Member homes

3.3 Exemption: “Design/Construction Materials and Services provided directly by...a Pueblo of Isleta government entity; the United States or any political subdivision thereof; the State of New Mexico, or any political subdivision thereof.”

The following chart provides examples of construction transactions that fall under this exemption (and thus that are not taxable), and other construction transactions that do not (and thus that are taxable).

Taxable Construction	Construction that is exempt from the tax
Construction services provided by a non-governmental contractor of the Pueblo of Isleta	Construction work within the Pueblo performed by NMDOT
	Construction work within the Pueblo performed by another Tribal government
	Any materials and services relating to construction work performed in-house by the Pueblo. For example, if Public Works staff perform construction work, none of the materials relating to that work is taxable.

3.4 Exemption: “Professional services, including accounting and legal services, to which the New Mexico Gross Receipts Tax applies.”

The following chart provides examples of construction transactions that fall under this exemption (and thus that are not taxable), and other construction transactions that do not (and thus that are taxable).

Taxable Construction	Exempt from the construction tax
Designing a public facility for the Pueblo of Isleta	Work by a consultant to review or comment on a design or architectural plan developed by a different vendor
Transportation of materials/fill to a construction site, including construction of a new road	Economic feasibility study relating to a construction site within POI
Construction project management services connected to a construction site within POI	Grant writer (or contractor retained to report on a grant) for funds relating to a construction site
Planning work completed by a licensed engineer for purposes of intended construction or renovations at specifically	Planning work unrelated to a specific construction project (i.e. Pueblo-wide safety plan for purposes of speculative grant

designated sites	opportunities)
Environmental assessment of planned construction site	
Archaeological or cultural assessment of planned construction site	
Asbestos, lead, and mold sampling as part of pre-renovation inspection work within a POI building or public facility	
Traffic control services, including developing and implementing a traffic control plan	

3.5 How are projects taxed if they are partially exempt? For example, Public Works is engaged in a project to construct new drinking water infrastructure - some of which requires the construction of a trunkline for the community at-large, and some of which requires the construction of service lines directly to homes.

The tax would apply only to the non-exempt portions of the project. In this example, the construction of the trunkline would be taxed but construction of the service lines would not. The Treasurer’s office and departments may use any reasonable method to determine the exempt percentage of the project and the taxable portion percentage of the project. That method should be recorded for purposes of the Treasurer’s tax collections. Consult with the Legal Department for assistance with developing a reasonable method to determine taxable portions of construction work that is partially-exempt.

3.6 What areas are presently exempt as qualified opportunity zones?

The facility that formerly housed the Fun Connection is the only area presently designated as a qualified opportunity zone exempt from the tax. *See Resolution No. 2024-033.*

4. BUDGET, COLLECTIONS, RECORDKEEPING

4.1 How will the new Design/Construction tax be paid?

Some contracts will assign responsibility for the Design/Construction tax to the Pueblo of Isleta. How the Pueblo covers the costs of that tax depends on the funding source for the construction project.

If federal or state grant funding is used for the project, the department director should first determine whether the tax is an eligible expense under that grant by asking the federal or state grant officer. If so, the tax should be charged to the grant. Alternatively, the department director may consult with the Grants and Contracts division of the Treasurer's Office and the Legal Department to determine whether the tax should be charged to the grant. If federal funds are used for the project, the following factors will be considered for this assessment:

- (a) Whether the tax expense is necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Whether the tax conforms to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Whether the tax has been consistently and uniformly applied to both federally-financed and other activities of the non-Federal entity.
- (d) Whether the tax has been accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Whether the tax has been determined in accordance with generally accepted accounting principles (GAAP) and 2 CFR Part 200.
- (f) The tax proceeds may not be used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period.
- (g) The tax must be adequately documented.
- (h) The tax cost must be incurred during the approved budget period.

Pueblo of Isleta funds may be used to cover the tax if:

- Pueblo of Isleta general funds are used to fund the construction project; or

- The construction project is funded by a federal or state grant, but the tax is not an allowable charge to that grant; or
- The construction project is funded by a federal or state grant and the tax is an allowable charge to that grant, but the award is insufficient to cover the costs of the tax.

In the event POI funds are used to cover the costs of the tax, the department director should determine whether its contingency budget is sufficient to cover the new cost. If so, the director should use its contingency budget for that purpose. If not, a separate contingency budget specifically for this tax may be available. The Tribal Council adopted a specific budget to cover construction tax costs for work performed in 2024, as most of this construction work was contracted prior to the adoption of the tax. The department director should work with the Treasurer to determine whether this budget may apply to their construction project. If not, the department director should consult with the Legal Department to draft a new resolution for this appropriation.

4.2 How will the new tax be billed?

Departments and the Casino must provide notice to the Treasurer of any construction work contemplated at the time of contracting. The departments and/or Casino should then facilitate their vendor's registration within the Treasurer's tax division.

All construction contractors must register with the Treasurer and obtain a POI Tax ID. To do so, vendors must download the POI Vendor ID Application on the Pueblo's website at <https://www.isletapueblo.com/treasury/>. The completed form must then be emailed to poitax@isletapueblo.com.

Upon registration, vendors will be assigned a POI Tax ID. At the close of each fiscal quarter, vendors will be required to submit a quarterly report and remit their tax to the Treasurer's office. The report shall be submitted on a form published by the Treasurer's office. The form is available through the Pueblo's website. Payments should be made with a company check or cashier's check and mailed to the Treasurer's Office. The Treasurer will then check the report from the vendor against its procurement records from the POI department to ensure that the correct tax was paid.

4.3 How do departments provide notice of the tax to vendors?

The Treasurer has drafted a notice to be sent to vendors. Departments should work with the Treasurer to ensure this notice is sent to the correct contact point.

4.4 How should departments budget for future projects, given this new tax?

Department directors should include this tax in budget proposals for construction projects in all state and federal grant applications. Likewise, for Pueblo-funded projects, department directors should include this tax in all budget proposals for construction projects to the Pueblo of Isleta Tribal Council.

4.5 Will the Pueblo provide vendors with a certification regarding the location of construction services?

Yes, at a vendor's request, the Treasurer will provide a written certification that the construction project is located on Pueblo lands and is thus subject to the Tribal Design/Construction Tax. Vendors may request such certification in order to calculate and document their tax liabilities and exceptions.

4.6 Do the Pueblo's Contract Templates include this tax?

Yes, updated contract templates for CMCI, Construction, and Design Engineering services were published upon adoption of this tax. The Procurement Division of the Treasurer's Office is already using these new templates.

4.7 What revenue is expected from the new tax?

Substantial revenue is anticipated from the new tax. More than \$2 million will be collected from the broadband project, for example. However, the Treasurer will not be able to estimate actual total revenue until the tax is incorporated into new state and federal grant budgets and in the Pueblo's appropriations. Each year, the Treasurer will report on tax revenue to the Tribal Council.

4.8 What will the new revenue be used for?

In compliance with the Pueblo of Isleta Law and Order Code Sec. 04-06-07, tax proceeds will be held in a separate account by the Treasurer for appropriations to infrastructure maintenance and improvement projects of the Pueblo and Casino. Each year, the Treasurer will report on tax revenue to the Council so that the Council may determine whether and how to use the account to fund projects in the next fiscal year.

History of Revisions to the Guidance

- None since the publication date.