

# Taxation of Native Americans Living on an Indian Reservation

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## Overview

Generally, no Nebraska tax is imposed on a Native American living on an Indian reservation located within the state of Nebraska.

## Definitions

For purposes of tax exemption in Nebraska, the following definitions will be used.

**Native American.** A Native American is an enrolled member of a recognized Native American Indian tribe, or a person of one-fourth or more Native American blood.

**Indian Reservation.** Indian reservations located in the state of Nebraska are the total land area provided for the Santee Sioux, Omaha, Winnebago, Iowa, and Sac and Fox Indian tribes under original allotment acts establishing the reservations as specifically amended by Act of Congress or Executive Order. This area includes most of Thurston County, portions of Knox, Cuming, Burt, Dixon, and Richardson counties; and the cities, towns, or villages of Santee, Lindy, Walthill, Macy, Rosalie, Thurston, Winnebago, and Preston. The city of Emerson, south of First Street, is located on the Winnebago Indian Reservation.

**Joint Ownership of Property.** Where there is joint ownership of property, the exemption applies only in proportion to the interest of the Native American living on an Indian reservation. The portion owned by a person who is not a Native American living on an Indian reservation is subject to taxation.

**Identification Card.** A Nebraska State Tax Exemption Identification Card and number will be issued by the Nebraska Department of Revenue, upon request, to any Native American living on an Indian reservation. A Nebraska Application for State Tax Exemption Identification, Form 25, must be completed to obtain an exemption. This identification card and number will assist retailers and employers in identifying those Native Americans who qualify for the exemption from state taxation as discussed below. An exempt card is **not** required in order to qualify for the exemption.

## Sales and Use Tax

**Retail Sale.** A retail sale is the transfer of title or possession of goods, utilities, admissions, warranties, maintenance agreements, computer software, lodging, or the provision of a taxable service (e.g., computer software training; building cleaning and maintenance services; pest control services; security or detective services; motor vehicle washing,

waxing, towing, and painting; and labor to install or attach tangible personal property) for a consideration.

A retail sale includes leases and rentals of tangible personal property.

**Exempt Retail Sale.** Retail sales are exempt from sales and use tax when they are made to Native Americans living on an Indian reservation and title and possession are taken or a taxable service is provided **within** the boundaries of an Indian reservation in Nebraska.

**Taxable Retail Sale.** Retail sales made to Native Americans are taxable when title and possession are taken, or a taxable service is provided, **outside** the boundaries of an Indian reservation.

**Retailer's Responsibility.** Retailers located on an Indian reservation in Nebraska are required to be licensed with the Nebraska Department of Revenue for collection of sales and use tax.

When exempt retail sales are made, retailers are required to indicate on their sales invoices or sales slips the name and address of the reservation, the Nebraska Tax Exemption number (if available), the sales price, and a description of the item or service sold.

If a Nebraska State Tax Exemption Card and number have not been assigned or are unavailable, the retailer must obtain from the purchaser a Nebraska Exemption Certificate for Native American Reservation Indians, Form 26, and retain it with the business records. A Form 26 should contain the following information:

- Name of the Native American;
- Retailer's name and mailing address;
- The Sales and Use Tax box on the Form 26 is checked;
- Date of the transaction; and
- Signature of the Native American.

This information is necessary to support the purchaser's exemption from sales tax.

A retailer who makes recurring sales of tangible personal property or taxable services which are delivered to a Native American within the boundaries of an Indian reservation in Nebraska does not need to accept a separate Form 26 for each sale. The retailer may accept a Form 26 designated as a "blanket" certificate to cover all future sales made to the Native American completing the certificate when title or possession is taken within the boundaries of an Indian reservation.

Retailers located off the Nebraska Indian reservation must obtain a Form 26 for all transactions with Native Americans where title and possession to the property sold are taken within the boundaries of an Indian reservation in Nebraska.

**Note:** The Form 26 is not necessary where there is a sale of tangible personal property or taxable service for less than \$50. The retailer is required only to distinguish on its business records the exempt Native American transactions from the nonexempt transactions.

## Income Tax

Generally, income earned by a Native American living on an Indian reservation is subject to the Nebraska income tax unless derived from sources within the boundaries of an Indian reservation in Nebraska.

A corporation's income is subject to tax, even though one or more shareholders is a Native American living on an Indian reservation.

**Computation of Individual Income Tax for Native Americans Living on an Indian reservation.** A Native American living on an Indian reservation is subject to tax on all income except that income derived from sources within the boundaries of an Indian reservation. Rules used to determine the source of income are contained in [Nebraska Individual Income Tax Reg-22-003](#). In applying this regulation, Indian reservations in Nebraska will be treated as though they are another state, and the Native American living on an Indian reservation will be treated in the same manner as a nonresident.

**This information has been updated.**

A return is not required if the income of a Native American living on an Indian reservation is earned entirely within the boundaries of an Indian reservation in Nebraska. If income is earned from sources on and off the reservation, a return is required. The income derived from sources within the boundaries of an Indian reservation in Nebraska will be treated as a Nebraska adjustment decreasing federal adjusted gross income and must be reported on Schedule I of the Nebraska Individual Income Tax Return, Form 1040N.

## Income Tax Withholding

The wages payable to a Native American living on an Indian reservation are not subject to Nebraska income tax withholding if the following two criteria are met:

- The individual must be a Native American living on an Indian reservation, and
- The wages must be earned for services performed within the boundaries of an Indian reservation.

If both of these requirements are not met, the wages are subject to Nebraska income tax and income tax withholding. If a Native American employee living on an Indian reservation derives wages from services performed both within and outside the boundaries of an Indian reservation in Nebraska, the percentage withholding method set forth in [Nebraska Withholding Tax Reg-21-006](#) must be used.

**Employer's Record-keeping Requirements.** Native American employees living and working on an Indian reservation must provide their employers with a Nebraska Exemption Certificate for Reservation Indians, Form 26, for wages earned within the boundaries of an Indian reservation in Nebraska. The Native American employee must check the box on the Form 26 indicating that he or she resides on an Indian reservation in Nebraska and earns wages from services performed within the boundaries of an Indian reservation in Nebraska.

**This information has been updated.**

## Motor Vehicle Tax

A Native American living on an Indian reservation registering a motor vehicle at a location within the boundaries of an Indian reservation in Nebraska is exempt from the motor vehicle tax, but is **not exempt** from license and registration fees.

A motor vehicle **leased or rented** to a Native American living on an Indian reservation is not exempt from the motor vehicle tax.

**Sales Tax.** The sale of a motor vehicle to a Native American living on an Indian reservation registered at a location within the boundaries of an Indian reservation in Nebraska is exempt from the Nebraska sales and use tax. The Nebraska Sales and Use Tax Statement for Motor Vehicles and Trailer Sales, Form 6, must be completed by the Native American claiming exemption and furnished to the county treasurer.

Lease or rental of a motor vehicle to a Native American living on an Indian reservation is exempt from the Nebraska sales and use tax if the lease term is for less than one year and delivery of the vehicle is taken within the boundaries of an Indian reservation in Nebraska. If the lease is for a term of one year or more, sales tax does not apply if the vehicle is properly registered at an address within the boundaries of an Indian reservation in Nebraska.

## Personal Property Tax

Tangible personal property is not subject to the property tax if the following two criteria are met:

- The property must be owned by a Native American living on an Indian reservation; and
- The tangible personal property must have a tax situs within the boundaries of an Indian reservation in Nebraska.

This includes all tangible personal property which otherwise would be reported for purposes of taxation.

## Real Property Tax

Real property held in fee by a Native American is subject to real property taxation even if the property is located on an Indian reservation.

## Motor Fuel Tax

The exemption from payment of motor fuel taxes by a Native American purchaser who resides on the reservation, has been replaced by the provisions of Neb. Rev. Stat. § 66-489(5). Pursuant to this section, agreements are in effect between the state of Nebraska and the Winnebago, Santee-Sioux, and Omaha Tribes. The terms of these agreements allow each tribe to collect a “tribal tax” on its respective reservation, equal in rate and basis with the state fuel tax. The agreements further provide that the tribes and the state share this “tribal tax” in a predetermined ratio and are in-lieu-of the exemption allowed to Native American purchasers residing on the reservation.

## Bingo, Pickle Cards, and Other Forms of Gaming

The gross receipts from bingo games conducted by an Indian tribe on an Indian reservation in Nebraska are not subject to the bingo tax, pursuant to 25 U.S.C. Section 2701, et al. The conduct of bingo, as well as pickle cards sold at the same location, by an Indian tribe are not subject to state regulation or taxation. Generally, all other forms of gaming conducted by an Indian tribe on an Indian reservation, including keno, are prohibited unless conducted in conformance with a Tribal-State compact. Questions relating to taxation of lawful forms of gaming conducted by persons other than an Indian tribe on Indian land should be referred to the Department’s Charitable Gaming Division.

## Cigarette Tax

Sales of cigarettes to a Native American living on an Indian reservation where title and possession are taken within the boundaries of an Indian reservation in Nebraska are exempt from the Nebraska cigarette tax.

**Retailer’s Responsibility.** Cigarette retailers making exempt sales to Native Americans living on an Indian reservation must purchase their cigarettes with tax included, but may claim a credit for the cigarette tax paid to the licensed wholesaler for those exempt sales. This claim of credit must be made to the licensed wholesaler on the Nebraska Credit Computation for Cigarette and Tobacco Products Sold to Native American Reservation Indians, Form 68.

**Record-keeping Requirements.** The cigarette retailer is required to distinguish on its records the exempt cigarette sales from the nonexempt cigarette sales to support any claims for credit.

**Wholesaler’s Responsibility.** The wholesaler should allow credit to the retailer for cigarette tax claimed on the Form 68. The designated copy of the completed Form 68 must be submitted with the Purchase Order for Nebraska Cigarette Tax Stamps in order to receive credit for the credits allowed to the retailers. The wholesaler should retain a copy of the Form 68 with its records.

## Claiming Refund of Nebraska Taxes Paid

A Native American living on an Indian reservation who has made an overpayment of Nebraska taxes may file for a refund. The statute of limitations for filing a refund claim is:

- Three years for sales, use, individual income, and motor fuels taxes. The claim must be submitted to the Nebraska Department of Revenue; and
- Thirty days after payment for motor vehicle and personal property taxes. The claim must be submitted to the county treasurer.

To obtain a refund of income tax withheld during the current taxable year, file a current year Nebraska Individual Income Tax Return, Form 1040N.

Each claim for refund of Nebraska taxes paid must be supported by proof of the claimant’s Native American status and that title or possession was taken on the Indian reservation where he or she lives. The claimant may prove his or her status of living on an Indian reservation by submitting his or her identification card number or a copy of his or her certificate of blood quantum issued by the tribe, or a census certificate issued by the United States Bureau of Indian Affairs. Where there is joint ownership of property for which exemption is claimed, each of the joint owners must establish his or her status as a Native American living on an Indian reservation.

**This information has been updated.**

**Taxpayer Assistance.** For additional information, contact the Nebraska Department of Revenue, P.O. Box 94818, Lincoln, NE 68509-4818, or call 1-800-742-7474 (toll free in NE and IA) or 1-402-471-5729.