NORDHAUS LAW FIRM, LLP
ATTORNEYS AT LAW

ALBUQUERQUE, NM
SANTA FE, NM
WASHINGTON, DC

1239 PASEO DE PERALTA
SANTA FE, NEW MEXICO 87501
TELEPHONE 505-982-3622
FACSIMILE 505-982-1827

WAYNE H. BLADH
wbladh@nordhauslaw.com

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Taxation of Tribal Sales on Tribal Land

The Legislature has two basic options for addressing taxation of sales by Tribal businesses located on Tribal Lands:

Power Option: Structure New Mexico taxes in order to maximize the number of sales that will be subject to state taxation.

Policy Option: Structure New Mexico taxes in order to achieve tax policy objectives that are broader than "tax it if you can."

Power Option	Policy Option
Driven by what U.S. Supreme Court decisions say a State can legally tax.	Driven by what Legislature decides is good tax policy for New Mexico, including Tribes.
Gives the U.S. Supreme Court and parties in other states the authority to set New Mexico tax policy.	Allows Legislature to determine New Mexico tax policy based on local conditions and negotiation with Tribes.
Requires Legislature to focus on the political status (membership in the Tribe) of the customer in the transaction being taxed. [Two cash register system.]	Allows tax systems that are based on geography rather than political status of the customer. [E.g., Gasoline Tax, Cigarette Tax, Gross Receipts Tax.]
Encourages an adversarial relationship with Tribes.	Encourages a cooperative relationship with the Tribes.

Power Option	Policy Option
Results in permanent litigation between State and Tribes.	Minimizes litigation between State and Tribes. Issues are resolved through negotiation and legislative process.
Undermines ability of Tribal governments to raise tax revenues.	Recognizes that both State and Tribal governments need tax revenue to fund governmental programs.
Results in double taxation of non-member customers.	Avoids double taxation of non-member customers.
Discourages economic development on Tribal Land.	Encourages economic development investment on Tribal Land.

The New Mexico Legislature Has Adopted the Policy Option, with the Support of the Tribes.

That Approach is Working Well for the State and the Tribes.

The State Does Not Try to Tax Tribal Sales to Customers Who Are Non-Members of the Tribe.