

such Person for injuries inflicted as a result of intoxication by the consumer of such Alcoholic Beverage.

C. Sale to Minors. Any Person who sells, furnishes, gives, or causes to be sold, furnished, or given away any Alcoholic Beverage to any Person under the Legal Age is guilty of a violation of this Act.

D. Violation of Liquor License Terms and Conditions. Any Person who violates the terms and conditions of a liquor license shall be guilty of a violation of this Act.

SECTION 5-403 PENALTIES

A. The Board is authorized to make written determinations and enforce civil penalties or damages for violations of this Act.

B. Penalties may include, but are not limited to, revocation or suspension of liquor license, forfeiture or confiscation of Alcoholic Beverages, fines, monetary damages, and injunctive relief.

C. Civil penalties/fines may not exceed \$5,000.

D. The Board may bring an action in Tribal Court to enforce any duly assessed civil penalties determined in accordance with this Article.

ARTICLE V

MISCELLANEOUS PROVISIONS

SECTION 5-501 AMENDMENT

This Act may only be amended pursuant to a duly enacted amendment by Tribal Council and, to the extent required by Federal law, certification by the Secretary of the Interior and publication in the **Federal Register**.

SECTION 5-502 SEVERABILITY

If any part or provision of this Act is held by any agency or court of competent jurisdiction to be invalid, void or unenforceable, such adjudication shall render such provisions inapplicable to other Persons or circumstances. The remaining provisions shall be unaffected and shall remain in full force and effect.

SECTION 5-503 PRIOR INCONSISTENT ENACTMENTS

Any prior Tribal laws, resolutions or ordinances, to the extent they are inconsistent with this Act, are hereby repealed.

SECTION 5-504 TRIBAL COURT JURISDICTION

The Tribal Court shall have jurisdiction to hear appeals arising under Articles III and IV of this Act. The Tribal Court shall also have jurisdiction to hear any claim, cause of action, or enforcement action brought by the Liquor Control Board for violation of this Act.

Legislative History:

- 10/26/2018 Thirty (30) day public review phase begins.
 11/15/2018 Public hearing held at Tribal Office.
 11/25/2018 Thirty (30) day public review phase ends.
 11/29/2018 Seven (7) day final review phase begins.
 12/20/2018 Tribal Council passes Act by Resolution No. 2018-69 by vote of 6 for, 0 against, 1 abstaining.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Jamul Indian Village of California Business Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: On June 14, 2019, the Bureau of Indian Affairs (BIA) approved the Jamul Indian Village of California (Tribe) Business Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business leases without further BIA approval.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS 4624-MIB, Washington, DC; telephone: (505) 563-3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into agricultural and business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review

process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Jamul Indian Village of California.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72,440, 72,447-48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because "tax on the payment of rent is indistinguishable from an impermissible tax on the land." See *Seminole Tribe of Florida v. Stranburg*, No. 14-14524, *13-*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker*

balancing test, which is conducted against a backdrop of “traditional notions of Indian self-government,” requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72,447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department’s leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress’s overarching intent was to “allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.” 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes “flexibility to adapt lease terms to suit [their] business and cultural needs” and to “enable [Tribes] to approve leases quickly and efficiently.” *Id.* at 5–6.

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that “[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding”). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 2043–44 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA’s surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land

leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Jamul Indian Village of California.

Dated: June 14, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Delaware Nation; Beverage Control Act of 2019

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Delaware Nation Beverage Control Act of 2019 (Alcohol Ordinance). The Alcohol Ordinance regulates and controls the possession, sale, manufacture, and distribution of alcohol on Delaware Nation trust lands in conformity with the laws of the State of Oklahoma where applicable and necessary. Although the Alcohol Ordinance was adopted on March 5, 2019, it does not become effective until published in the **Federal Register**.

DATES: This Alcohol Ordinance takes effect on August 21, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Lovin, Tribal Government Officer, Southern Plains Regional Office, Bureau of Indian Affairs, Post Box 368, Anadarko, Oklahoma 73005, telephone:

(405) 247–1534, fax: (405) 247–1534; or Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS–3645–MIB, Washington, DC 20240, telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 5886, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. On March 5, 2019, the Delaware Nation Executive Committee duly adopted the Delaware Nation Beverage Control Act of 2019. This Notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Delaware Nation Executive Committee duly adopted by Resolution No. 2019–031 this Delaware Nation Beverage Control Act of 2019 on March 5, 2019.

Dated: June 25, 2019

Tara Sweeney,

Assistant Secretary—Indian Affairs.

Authority: 18 U.S.C. 1161

The Delaware Nation Beverage Control Act of 2019 shall read as follows:

Alcohol Ordinance of the Delaware Nation

Findings:

The Delaware Nation (hereinafter “the Nation”) is a federally-recognized Indian tribe, exercising jurisdiction over all Tribal Lands as specified herein.

The Nation’s Constitution, Article VI, Section 2, empowers the Executive Committee of the Nation to promulgate ordinances and resolutions for the Nation.

The sale of Alcohol subject to the terms and provisions of this Alcohol Ordinance and all applicable laws, shall provide funds for the continued operation and strengthening of the Tribal government and the delivery of Tribal government services. It shall also produce capital which the Nation can use to further develop its economy.

The enactment of this Alcohol Ordinance will also increase the ability of the Nation’s government to control the distribution and possession of Alcohol within the Tribal Lands.

NOW THEREFORE, to permit the sale of Alcohol subject to the necessary controls and to promote the health, safety and welfare of its members, the