



Tribal Tax Department Agua Caliente Band of Cahuilla Indians

Tribal Food and Beverage Sales Tax FAQs

Summary:

Beginning January 1, 2023, and as a result of revisions to California law¹, retailers that operate an eating or drinking establishment (such as a restaurant or bar) on the Agua Caliente Band of Cahuilla Indians reservation under a federally authorized lease or sublease will be required to report and remit a sales tax on food and beverages sold for consumption on the reservation to the Tax Department of the Agua Caliente Band of Cahuilla Indians.

- If a sale is subject to the Tribal food and beverage sales tax, it is not subject to the state of California's sales or use tax collected by the California Department of Tax and Fee Administration.
- The Tribal food and beverage sales tax is reported and paid quarterly, and retailers will receive a credit of three percent (3%) of the tax amount due when the tax is reported and paid on or before the quarterly due date.
- The Tribal food and beverage sales tax rate is at the same rate as the sales or use tax rate otherwise imposed and collected by California Department of Tax and Fee Administration at that location.
- Sales of meals, food, and beverages made at the business location on the reservation are presumed for consumption on the reservation.
- A sale for consumption off of the reservation, such as one made through a drive-up window or delivered off of the reservation by the retailer, is generally subject to the state of California's sales or use tax.

For more detailed information, please see the FAQs below:

What is the Tribal Food and Beverage Sales Tax?

Question: Why is the Agua Caliente Band of Cahuilla Indians collecting a Tribal food and beverage sales tax?

Response: Effective May 26, 2021, California Code of Regulations, Title 18, section [1616](#) clarifies that federal law preempts the imposition of state sales and use taxes on specified sales and purchases of meals, food, and beverages for consumption on an

[CDTFA Regulation 1616](#); CDTFA Letter to Restaurant Owners on Indian Reservations [L-815](#) ([ca.gov](#))

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Indian reservation. Further, pursuant to the Memorandum of Understanding (“MOU”) between Agua Caliente Band of Cahuilla Indians (“the Tribe”) and California Department of Tax and Fee Administration (“CDTFA”), as well as Sec. 3.08.1210 to Sec. 3.08.1370 of the Tribe’s Tax [Ordinance](#), the Tribe will commence the imposition of its lawful tribal sales tax upon eating or drinking establishments on the Agua Caliente Band of Cahuilla Indians reservation on January 1, 2023.

Question: Can the Agua Caliente Band of Cahuilla Indians impose a Tribal food and beverage sales tax on the reservation?

Response: Yes. the Tribe has inherent sovereign authority and constitutional authority pursuant to Sections (a), (b), (d), (i), and (o) of Article V of the Constitution and Bylaws of the Agua Caliente Band of Cahuilla Indians to assess taxes. Pursuant to these authorities, on June 8, 2021, the Tribe adopted Amendment No. 1 to the Tribal Tax Code Ordinance (Ordinance No. 58), now codified as Chapter 3.08 of the Agua Caliente Tribal Code (the “[Tribal Code](#)”), and which enumerated several tax programs, including a sales tax program set forth in Subchapter 10 of Chapter 3.08 of the Tribal Code (the “[Tribal Sales Tax Program](#)”). The Tribal Code further establishes a Tax Department that will administer these taxes and details the powers and duties of the Tax Department.

About the Tribal Food and Beverage Sales Tax

Question: What is the Tribal food and beverage sales tax?

Response: This is a sales tax that is imposed on the gross receipts from the sale of meals, food, and beverages sold by a retailer that operates an eating or drinking establishment (such as a restaurant or bar) on the reservation under a federally authorized lease or sublease for food and beverages sold for consumption on the reservation. (Sec. 3.08.1230 of the Tribe’s Tax Ordinance; Cal. Code Regs., tit. 18, section [1616](#).)

Question: Do I have to pay the Tribal food and beverage sales tax and the California sales or use tax?

Response: No. The sale of meals, food, and beverage is subject to either the Tribal food and beverage sales tax or the state of California sales or use tax (administered by CDTFA). The sale of meals, food, and beverages is not subject to both a Tribal and a California tax.

Question: Is there a payment discount for timely payment?

Response: Yes. There is a discount/credit available for timely reporting and payment of the tax amount due in the amount of three percent (3%) of the tax due when the tax is reported and paid on or before the quarterly due date. (Sec. 3.08.1370 of the Tribe’s Tax Ordinance.) This amount is calculated on the quarterly tax return.

Question: When does the Tribal food and beverage sales tax begin?

Response: The Tribal food and beverage sales tax will commence on January 1, 2023. The first quarter ends on March 31, 2023, and the tax return and corresponding payment for the first quarter is due on April 30, 2023. Tax returns are filed on a quarterly basis, and the returns and payments are due at the end of the month following each quarter.

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Question: Who owes the Tribal food and beverage sales tax?

Response: The Tribal food and beverage sales tax is imposed upon the retailer. (Sec. 3.08.1240 of the Tribe's Tax Ordinance.) However, the retailer may collect reimbursement from the customer. (Sec. 3.08.1260 of the Tribe's Tax Ordinance.)

Question: Although I, as a retailer, owe the tax, can I collect tax reimbursement from my customer?

Response: Yes. The retailer may collect an amount as Tribal food and beverage sales tax reimbursement from the customer. (Sec. 3.08.1260 of the Tribe's Tax Ordinance.)

Question: What sales are subject to Tribal food and beverage sales tax?

Response: Sales of meals, food, and beverages sold by a retailer that operates an eating or drinking establishment (such as a restaurant or bar) on the reservation under a federally authorized lease or sublease for food and beverages sold for consumption on the reservation. (Sec. 3.08.1230 of the Tribe's Tax Ordinance; Cal. Code Regs., tit. 18, section [1616](#).) Sales of meals, food, and beverages made at the business location on the reservation, such as "carry out" or "to go" and "dine in" sales, are presumed for consumption on the reservation. (Cal. Code Regs., tit. 18, section [1616](#), subd. (d)(3)(B)4.) Accordingly, "carry out" or "to go" and "dine in" sales are subject to the Tribal food and beverage sales tax.

Question: *Deliveries by the Retailer* - How are sales delivered by a retailer taxed?

Response: When food, meals, and beverages are delivered by a retailer to a location on the reservation, then the sales are subject to the Tribal food and beverage sales tax. On the other hand, when food, meals, and beverages are delivered by a retailer to a location off of the reservation, then the sale is subject to the California sales and use tax and not the Tribal food and beverage sales tax. As contemplated by Regulation 1616, the California Department of Tax and Fee Administration allows a retailer to report the California sales and use tax on a percentage basis based upon a test period. (Reg. [1616](#) (d)(3)(B)5.) Accordingly, the Agua Caliente Band of Cahuilla Indians Tax Department is here to assist in coordinating the test if so needed. The Agua Caliente Band of Cahuilla Indians web site has a tool to identify locations on and off of the reservation. You may [search by address](#) to determine if the location is on or off of the reservation. (See <https://aguacaliente.org/gis>) Furthermore, if requested, we will assist with by working with you and the California Department of Tax and Fee Administration.

Question: What sales are not subject to the Tribal food and beverage sales tax?

Response: For those retailers subject to the Tribal food and beverage sales tax, sales of meals, food, and beverages for consumption off or outside of the reservation are not subject to the Tribal food and beverage sales tax. For example, sales made at a "drive through" window are presumed to be made for consumption off the reservation. (Cal. Code Regs., tit. 18, section [1616](#), subd. (d)(3)(B)4.) Accordingly, those sales from a "drive through" window are generally subject to the sales tax administered by CDTFA, but not the Tribal food and beverage sales tax. Additionally, when sales of meals, food, and beverages are delivered by a retailer from their establishment to a location off of the reservation, that sale is not subject to the Tribal food and beverages sales tax, but is

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instead subject to the California state sales and use tax. (Cal. Code Regs., tit. 18, section [1616](#), subd. (d)(3)(B)4.)

Question: What if I don't pay the Tribal food and beverage sales tax?

Response: Similar to the California sales and use tax law, if the Tribal food and beverage sales tax is not paid timely, it will be subject to penalties and interest on that unpaid amount. (Sec. [3.08.710](#) of the Tribe's Tax Ordinance.) Furthermore, the tax department will diligently use all lawful means to collect all tax obligations owed to the Tribe. (Sec. [3.08.410](#) et seq. of the Tribe's Tax Ordinance.)

Question: How will the Tribal food and beverage sales tax revenue be spent?

Response: The Tribe's imposition and collection of the Tribal food and beverage sales tax is an appropriate method of generating revenues for the Tribe and paying for a portion of the costs of governmental services and programs incident to tribal self-determination, self-sufficiency, and growth of a strong tribal government. The Tribal food and beverage sales tax revenue will be used to protect and preserve the political integrity and economic security of the Tribe and to protect and preserve the health, safety, and general welfare of Tribal Members and the broader Reservation community. Importantly, 100% of the collected tax revenues will be retained within the community rather than being sent to Sacramento or to other areas in Riverside County that are outside of the Coachella Valley. A portion of the proceeds will be used to support the public safety in the cities and the communities in which the retailers operate.

Question: Who at the Agua Caliente Band of Cahuilla Indians can I speak with about the Tribal food and beverage sales [tax](#)?

Response: If you have questions about the Tribal food and beverage sales tax, please contact Robert Tucker by phone at (760) 699-6975 or by email at rtucker@aguacaliente-nsn.gov. Additional information is available on our web page at <https://www.aguacaliente.org/tax-department>.

Question: Is there a contact at the California Department of Tax and Fee Administration ("CDTFA")? Who is that person?

Response: Please contact Charles Pruitt at the CDTFA Rancho Mirage office at (760) 770-4828.

Question: Is there information available from the California Department of Tax and Fee Administration regarding the Tribal food and beverage sales tax?

Response: Yes. The California Department of Tax and Fee Administration created [Publication L-815](#), Letter to Restaurant Owners on Indian Reservations to explain the amendments to Regulation 1616 and the impact on restaurants and bars. Additionally, a link to the California Department of Tax and Fee Administration web site and to Regulation 1616 is available here: Regulation [1616](#).

Registration

Question: Who is required to register with Agua Caliente Band of Cahuilla Indians to pay the Tribal food and beverage sales tax?

Response: Every retailer that operates an eating or drinking establishment (such

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as a bar or restaurant) that leases property on the reservation and makes sales of meals, food and beverages on the reservation is required to register to obtain a retailer's permit. (Secs. [3.08.1110](#) and [3.083.08.1230](#) of the Tribe's Tax Ordinance.) As a lessee of property on the reservation, one is required to comply with applicable law. In failing to register with the Tribal Tax Department to report and pay the Tribal food and beverage sales tax, a retailer risks breaching terms of the lease for failure to comply with applicable law, including the Tribal Tax Code. Retailers must report and pay the Tribal food and beverage sales tax quarterly to the Tribal Tax Department. (Sec. [3.08.1340](#) of the Tribe's Tax Ordinance.)

Question: How do I register?

Response: Contact Robert Tucker at rtucker@aguacaliente-nsn.gov or at (760) 699-6975 for details and an application. For your convenience, an application for registration is available on the web site at https://www.aguacaliente.org/documents/tax-department/Registration_rdt.pdf.

Question: How do I contact Agua Caliente Band of Cahuilla Indians if my business changes or I need additional information?

Response: Please contact Robert Tucker by email at rtucker@aguacaliente-nsn.gov or by phone at (760) 699-6975. For your convenience, any business changes can be noted in an application for registration is available on the web site at www.aguacaliente.org/documents/tax-department/Registration_rdt.pdf.

Question: If I have questions for the California Department of Tax and Fee Administration ("CDTFA"), who should I contact?

Response: Please contact Charles Pruitt at the CDTFA Rancho Mirage office at (760) 770-4828.

Collecting the Tribal food and beverage sales tax

Question: What is the current Tribal food and beverage sales tax rate?

Response: The tax rate varies by the location of the retailer. It ranges from 7.75% to 9.25%. The Tribal food and beverage sales tax rate is the same as the state of California sales and use tax rate at each location. For example, the current California sales and use tax rate in Palm Springs is 9.25%, and the Tribal food and beverage sales and use tax rate in Palm Springs is also 9.25%. However, when the Tribal food and beverage sales tax is reported and paid on or before the quarterly due date, a credit of 3% of the tax due will be allowed on the Agua Caliente Band of Cahuilla Indians quarterly tax return.

Question: Can I collect reimbursement from my customer?

Response: Yes. The Tribal food and beverage sales tax is imposed upon the retailer, but the retailer may collect reimbursement from the customer. (Sec. 3.08.1260 of the Tribe's Tax Ordinance.)

Filing and Making a Payment

Question: When are the Tribal food and beverage sales tax returns and payments due?

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Response: The Tribal food and beverage sales tax is due at the end of the month following the close of the quarter. For example, returns and payments are due as follows:

<u>Quarter</u>	<u>Due</u>
January 1 through March 31	April 30 th
April 1 through June 30	July 31 st
July 1 through September 30	October 31 st
October 1 through December 31	January 31 st

Question: How do I file returns?

Response: A retailer will file tax returns and make electronic payments on the Agua Caliente Band of Cahuilla Indians Tax Department web page. It is expected that the reporting and payment software will be completed in February 2023 in preparation for the April 2023 filing and payment. At such time, the Tax Department will contact registered retailers with log in information and update the FAQs to include that information. Furthermore, instructions and training videos will be posted to the Tax Department web page.

Question: How do I pay the Tribal food and beverage sales tax?

Response: A retailer may file tax returns and make payments on the Agua Caliente Band of Cahuilla Indians Tax Department web page. It is expected that the reporting and payment software will be completed in February 2023 in preparation for the April 2023 filing and payment. At such time, the Tax Department will contact registered retailers with log in information and update the FAQs to include that information. Furthermore, instructions and training videos will be posted to the Tax Department web page.

Question: Is there a payment discount for timely payment?

Response: Yes. There is a discount/credit available for timely reporting and payment of the tax amount due in the amount of three percent (3%) of the tax due when the tax is reported and paid on or before the quarterly due date. (Sec. 3.08.1370 of the Tribe's Tax Ordinance.) This amount is calculated on the quarterly tax return.

Question: Do I pay the tax electronically?

Response: Yes. Tax returns and tax payments are made electronically. A retailer may file tax returns and make payments on the Agua Caliente Band of Cahuilla Indians Tax Department web page. It is expected that the reporting and payment software will be completed in February 2023 in preparation for the April 2023 filing and payment. At such time, the Tax Department will contact registered retailers with log in information and update the FAQs to include that information. Furthermore, instructions and training videos will be posted to the Tax Department web page.

Question: How long do I need to keep records?

Response: Records must be kept for four years from the date that a tax obligation determination becomes final. (Sec. 3.08.810 of the Tribe's Tax Ordinance.)