

RESOLUTION OF THE
BUDGET AND FINANCE COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving the Navajo Nation Sales Tax Trust Fund
Plan of Operation for Distributing Funds

WHEREAS:

1. Pursuant to 2 N.N.C. §§ 371 and 372(D), the Budget and Finance Committee is established and continues as a standing committee of the Navajo Nation Council with authority to protect the interests of the Navajo People through efficient use of funds, as well as through prudent management of financial reserves; and
2. Pursuant to 2 N.N.C. § 372(B)(4), the Budget and Finance Committee is authorized to coordinate and review fiscal activities of the Navajo Nation and its chapters; and
3. Pursuant to 2 N.N.C. § 374(B), the Budget and Finance Committee is authorized to require reports from and monitor the financial performance of the Navajo Nation and its chapters; and
4. By Resolution CO-84-01, the Navajo Nation Council approved the Navajo Nation Sales Tax with an effective date of April 1, 2002, and that Tax is attached hereto as Exhibit A; and
5. Pursuant to Section 620(B) of that Tax, 100% of the net revenue generated from retail establishments shall be distributed to the specific chapter in which the retail sale occurred, so long as that chapter is governance-certified at the time of the sale; and
6. Pursuant to Section 620(C) of that Tax, 100% of the net revenue generated from retail establishments where no governance-certified chapter exists, shall be deposited in a trust fund and distributed pursuant to a plan of operation developed by the Office of Navajo Government Development and approved by the Budget and Finance Committee; and
7. The Budget and Finance Committee has determined that the Navajo Nation owes a higher duty of care to the chapters and the taxpayers to ensure the revenues generated by taxation, are adequately accounted for, as well as expended for infrastructure and economic development and governmental purposes; and
8. Pursuant to Section 620(C) of that Tax, the Office of Navajo Government Development, in coordination with the Office of the Tax Commission and the Budget and Finance Committee, conducted public hearings on the draft Navajo Nation Sales Tax Trust Fund Plan of Operation for Distributing Funds ("Plan of Operation"), and revised that Plan of Operation based on those hearings; and

9. The Budget and Finance Committee has determined that it is in the best interest of the Navajo Nation to adopt the *Plan of Operation* attached hereto as Exhibit B, with distributions to begin in Fiscal Year 2004.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Budget and Finance Committee of the Navajo Nation Council hereby approves the *Plan of Operation*, attached hereto and incorporated herein as Exhibit B, with distributions to begin in Fiscal Year 2004.

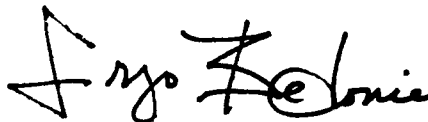
2. The Budget and Finance Committee of the Navajo Nation Council further directs the Division of Community Development to make all necessary arrangements within its Division for the adequate implementation of this *Plan of Operation*, as well as provide the 110 chapters with copies of the *Plan of Operation*.

3. Consistent with the *Plan of Operation*, the Budget and Finance Committee hereby directs the Office of the Controller to make all necessary arrangements within its Division for adequate implementation.

4. Consistent with the *Plan of Operation*, the Budget and Finance Committee hereby directs the Office of the Navajo Tax Commission to make all necessary arrangements within its Office for implementation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona) at which a quorum present and that same was passed by a vote of 5 in favor, 2 opposed, and 0 abstained, this 17th day of December, 2002.



Lorenzo Bedonie
Chairperson

Motion: Bennie Shelly
Second: Albert E. Ross, Jr.

SALES TAX
Chapter 6
24 N.N.C. §§ 601 et seq.

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Section 601. SHORT TITLE.

The tax imposed by this Chapter shall be called the "Sales Tax."

Section 602. PURPOSE.

The Navajo Nation Council hereby enacts this tax for the privilege of engaging in business activity within the Navajo Nation, and for purposes of defraying necessary governmental expenses at the national and local level incurred in providing for the public welfare.

Section 603. TAX IMPOSED.

A tax is hereby imposed on the gross receipts of a person. The tax due for a period is determined by first calculating applicable gross receipts for a period, and then multiplying those gross receipts by the applicable tax rate.

Section 604. LEGAL INCIDENCE AND RESPONSIBILITY FOR PAYMENT.

The person liable for the payment of the tax imposed by this Chapter is the person receiving the gross receipts from a sale.

Section 605. RATE OF TAX.

Consej
[Incentive Trust]

The tax imposed by this Chapter is imposed at a rate of not less than 2%, nor more than 6%, which shall be specifically established by regulations promulgated by the Navajo Tax Commission. Until another rate is established, the rate shall be three percent (3%) of the applicable gross receipts from all retail sales (.03 x applicable gross receipts).

Section 606. ADMINISTRATION.

All provisions of the Uniform Tax Administration Statute shall apply to this Chapter.

Section 607. DEFINITIONS.

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this Chapter:

(A) "Consideration" means any money or other pecuniary benefit, goods, personal or real property, services, or any combination thereof, which accrues as a right, profit, advantage, or benefit to a person, or which reflects a payment, detriment, loss, or responsibility of a person.

(B) "Construction Activity" means any building, altering, repairing, installing, or demolishing in the ordinary course of business, whether a project is completed or not, any:

1. road, highway, bridge, parking area, fence, livestock guard, gate, or related structure;
2. building, stadium, or other structure;
3. airport, railway, or similar transportation facility;
4. park, trail, athletic field, golf course, or similar facility;
5. dam, reservoir, canal, ditch, culvert, or similar facility;
6. sewerage or water treatment facility, power plant, pumping station, natural gas compressing station, gas processing plant and gathering lines, coal gasification plant, refinery, distillery, blending, or similar facility;
7. sewerage, water, coal, coal slurry, gas, or other pipeline;
8. transmission line;
9. radio, television, microwave, telephone, or other similar tower;
10. water, oil, gasoline, fuel or other storage tank;
11. shaft, tunnel, or other mining appurtenance;
12. microwave station, or similar facility;
13. leveling, clearing, or other preparation of land;
14. excavating of earth;
15. drilling of wells of any type, including seismograph shot holes or core drilling; or
16. any similar work or activity.

(C) "Employee" means a person in the service of another person under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.

(D) "Enterprise" means any non-corporate business entity created by action of the Navajo Nation Council.

(E) "Fair Market Value" means the amount of consideration at which personal or real property or services would change hands via an arms-length transaction between a

willing buyer and a willing seller, or a willing lessor and a willing lessee, neither of whom is under any compulsion to act.

"Fair Market Value" is to be determined on the basis of consideration in comparable sales, leasing, or rental transactions. If such information is not available, the Office of the Navajo Tax Commission may estimate the fair market value of the subject of a transaction according to procedures established by regulations.

(F) "General Contract" means any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or unwritten, which is entered into by a general contractor.

(G) "General Contractor" means a person primarily responsible for the performance of a construction project pursuant to a contract.

A "General Contractor" may enter into subcontracts, but remains primarily responsible for the management, planning, supervision, coordination, and performance of the contract.

(H) "Gross Receipts" means the total amount of money, credit, or any other pecuniary benefit or advantage, plus the fair market value of any other consideration, which is actually received during any period by any person from the sale or leasing of real or personal property of any kind, the sale of services of any kind, and any other productive activity of any kind, whether for profit or not, conducted wholly or partially within the Navajo Nation. "Gross Receipts" does not include the salary or wages of an individual engaged as an employee.

"Gross Receipts" includes those amounts received for any and all personal or real property which is an integral, but not necessarily a significant or primary, component of the service(s) rendered, regardless of the date, time, manner, and location of sale, delivery, or use of such personal or real property.

"Gross Receipts" includes those amounts received for any and all services which are an integral, but not necessarily a significant or primary, component of the sale or delivery of personal or real property, such as those amounts received as payment or reimbursement for costs of putting personal or real property into a finished and marketable form, payment for delivery and set-up, and payment for warranty or service contracts, regardless of the date, time, manner, or location of performance of such services(s).

"Gross Receipts" does not include amounts received as reimbursement for federal, state, or Navajo Nation taxes.

(I) "Manufacturing Activity" means combining or processing components or materials into a finished product, whether manually or mechanically, for the purpose of resale in the ordinary course of business, but does not include construction activity.

(J) "Navajo Nation" means all areas within the territorial jurisdiction of the Navajo Nation government.

(K) "Performance" means the partial or complete fulfillment or accomplishment of a promise, contract, or other obligation according to the terms of such promise or contract.

(L) "Period" means a calendar quarter.

(M) "Personal Property" means any tangible property which may be seen, touched, weighed or measured, or is in any manner perceptible to the human senses, including, but not limited to, electricity, natural gas, goods or merchandise of any kind, goods purchased for consumption or other use, goods purchased for incorporation into other personal or real property, and goods purchased for use in the performance of any service, whether or not such goods are consumable, movable, separable, affixed to, or incorporated into, other personal or real property, and whether or not such goods retain their original character upon final sale.

"Personal Property" also means any intangible property which cannot be physically perceived by the human senses, such as patents, trademarks, copyrights, franchises, licenses, knowledge, information, ideas, advice, and other intangible items of value or legal rights of any kind.

(N) "Sale" means any transaction, including a lease or rental, for consideration of any kind that results in the transfer of ownership and/or possession, delivery, use, or enjoyment of personal or real property, or the performance of any service.

A "Sale" includes circumstances where the title to personal or real property is retained as security for payment, and includes circumstances where no actual physical transfer of personal or real property or services occurs.

(O) "Sale for Resale" means a sales transaction for purposes of any further sale, processing, manufacturing, or other commercial or industrial purposes, as distinguished from a retail sale.

(P) "Services" means manual, mechanical, or intellectual labor performed, and includes other business activity that does not have physical characteristics.

(Q) "Subcontract" means any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or unwritten, between a general contractor and a subcontractor.

(R) "Subcontractor" means a person who takes from the general contractor a specific part of the work undertaken by the general contractor.

Section 608. NAVAJO NATION GOVERNMENT.

(A) Sales by corporations owned by the Navajo Nation government or any political subdivision thereof shall be fully subject to the tax imposed by this chapter.

(B) Sales by the government of the Navajo Nation, or political subdivisions or enterprises thereof, shall be subject to the tax imposed by this Chapter according to the following schedule:

(1) For all periods during calendar years 2001 and 2002, the Navajo Nation government, political subdivisions, and enterprises shall not be subject to the tax:

(2) For all periods during calendar year 2003, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to 25% of the rate imposed under Section 605 of this Chapter;

(3) For all periods during calendar year 2004, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to 50% of the rate imposed under Section 605 of this Chapter;

(4) For all periods during calendar year 2005, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to 75% of the rate imposed under Section 605 of this Chapter;

(5) For all periods during calendar year 2006 and all periods thereafter, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to 100% of the rate imposed under Section 605 of this Chapter.

(C) In cases where a person is partially owned by the Navajo Nation government or any of its political subdivisions or enterprises, gross receipts shall be prorated if necessary.

Section 609. EXEMPTIONS AND EXCLUSIONS.

(A) Nothing in this Chapter shall be construed as imposing a tax on the gross receipts of a subcontractor, provided that:

1. The general contractor with whom the subcontractor has contracted has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter by signing and issuing a certificate of exemption to the subcontractor; and,

2. The subcontractor must obtain from the general contractor a certificate of exemption issued to the general contractor by the Office of the Navajo Tax Commission. This certificate must be signed by the general contractor, and must indicate that the general contractor has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter.

3. The Commission may by form or regulation provide for the proper issuance and filing of the certificate of exemption.

(B) In calculating applicable gross receipts, a person may exclude those gross receipts on which any of the following Navajo Nation taxes have been paid:

1. Navajo Nation Oil and Gas Severance Tax;

2. Navajo Tobacco Products Tax; or

3. Navajo Nation Fuel Excise Tax.

(C) The tax imposed by this Chapter does not apply to gross receipts generated directly by the following:

1. sales for resale;
2. sales related to agricultural, farming, or livestock activities conducted within the Navajo Nation;
3. sales, other than sales from an unrelated trade or business as defined in Sections 511 - 513 of the Internal Revenue Code, by any person operating exclusively for non-profit or charitable purposes, and recognized as such pursuant to Section 501(C)(3) and 501(C)(19) of the United States Internal Revenue Code at the time of sale;
4. sales by facilities engaged in childcare, foster care or adoption placement, or battered families and homeless shelters;
5. sales of stocks, private or government-issued bonds, mutual funds, or other investments, including income received as dividends or interest;
6. sales by itinerant salespersons;
7. occasional sales by persons who are not regularly engaged in the business of selling personal or real property or services;
8. sales by educational institutions, including primary and secondary schools, colleges, vocational, and job training programs;
9. sales by hospitals and health-care organizations or facilities, such as nursing care institutions, residential care and mental health facilities, senior citizen care facilities or retirement homes, kidney dialysis facilities and blood banks, or other facilities which provide medical care and services;
10. sales from coin-operated vending machines of any type;
11. sales related to traditional Native American ceremonies or services;
12. sales of prescription medicines, prosthetic devices, or other medical devices, including medical oxygen, monitoring devices, dentures, hearing aids, crutches, insulin syringes, blood sugar monitoring strips or devices, prescription eyeglasses and contact lenses, or any durable medical equipment primarily and customarily used for medical purposes and not useful in the absence of illness, injury, or other medical condition;
13. sales related to funerals and human burials;
14. sales paid for by coupons issued by the United States Department of Agriculture under the Food Stamp Act of 1977 (P.L. 95-113);
15. sales paid for by vouchers issued under Section 17 of the Child Nutrition Act (P.L. 95-627 and P.L. 99-669);
16. sales of newspapers or other daily publications; or
17. sales of mobile homes, motor homes, motor vehicles, tractors, and hauling trailers for private use, possession, or enjoyment, provided that such items are not resold or used in any business activity or service.

(D) Nothing in this Chapter shall be construed as imposing directly upon the United States a tax which is prohibited by federal law.

(E) Through December 31, 2005, a person may exclude from gross receipts any amount received from a transaction on which the Hotel Occupancy Tax has been paid.

Section 610. CREDITS.

A person may take a credit against the tax imposed by this Chapter for taxes paid pursuant to any nondiscriminatory excise tax imposed by any duly established township or local government subunit, provided that revenues from such excise tax are utilized to provide essential governmental services.

Section 611. RESERVED.

Section 612. FILING OF RETURN:

(A) Each person must file a return indicating all sales from applicable gross receipts and the tax due under this Chapter for each period by the fifteenth day of the second month after the end of each calendar quarter. Returns are due on May 15, August 15, November 15, and February 15 of each calendar year.

(B) The Commission may by form or regulation require that other information, records or relevant documents which it deems necessary for the proper and efficient administration of this Chapter be included with the return, and that the return be signed by a specified person.

(C) No return need be filed by any person who is exempt under Section 609, provided that the Office of the Navajo Tax Commission may require such person to file the information necessary to establish its exempt status.

(D) In the case of the exemption provided for in Section 609(A), the filing by a person of a proper certificate of exemption with the Office of the Navajo Tax Commission shall constitute a claim for exemption.

Section 613. PAYMENT OF TAX.

Payment in full of the taxes owed for a particular period is due on the same date that the completed return for that same period is due. The Office of the Navajo Tax Commission, however, may require payment of any taxes due on a monthly basis.

Section 614. RECORDKEEPING.

(A) Each person shall keep all records which pertain to or relate in any manner to all sales from any business activity engaged in at any time by such person. Such

records shall be maintained separately for each reporting period during which a person is engaged in business activity.

(B) Records required to be kept must be preserved for four years beyond the end of the period to which the records relate.

Section 615. RESERVED.

Section 616. RESERVED.

Section 617. RESERVED.

Section 618. RESERVED.

Section 619. RESERVED.

Section 620. ALLOCATION OF REVENUE.

After allocation to permanent or special revenue funds as required by Navajo Nation law, and allocation to the Tax Administration Suspense Fund as required by the fiscal policy adopted by the Navajo Tax Commission for such Fund, the net revenue from this Chapter shall be disbursed as follows:

(A) Except as otherwise provided in subsections (B) and (C), 100% of the revenue collected shall be deposited into the General Fund of the Navajo Nation.

(B) 100% of the revenue collected from retail establishments shall be allocated to the specific chapter in which the retail sale occurred, provided that such chapter is governance-certified pursuant to the Local Governance Act at the time of such sale.

(C) 100% of the revenue collected from retail establishments in chapters that are not governance-certified shall be deposited into a trust fund to be appropriated pursuant to a plan of operation developed by the Office of Navajo Government Development and approved by the Budget and Finance Committee of the Navajo Nation Council.

Section 621. NO CONFLICT WITH LOCAL GOVERNANCE ACT.

The provisions of this Chapter and corresponding regulations shall not be construed inconsistently with the Local Governance Act, 26 N.N.C. §§1 - 2008 (1998).

Section 622. SEVERABILITY.

If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are severable.

Section 623. EFFECTIVE DATE.

This Chapter shall take effect in accordance with 2 N.N.C. § 1005.

Section 624. REPEALS.

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

Navajo Nation Sales Tax Trust Fund
Plan of Operation for Distributing Funds

Section 1: Adoption and Purpose

The Navajo Nation Sales Tax Trust Fund Plan of Operation for Distributing Funds is hereby adopted. Its purpose is to define how the Fund shall be structured and how distribution to the chapters shall occur. The distribution shall be agency-based so the revenue generated at retail establishments in an agency shall be shared among the chapters in that same agency.

Section 2: Declaration of Policy

The policy underlying this Plan of Operation is to legitimize the use of the tax by dedicating it to infrastructure and economic development, and other governmental purposes and to ensure that the revenue is accounted for.

Section 3: Deposits and Identification of Fund Accounts

The Office of the Navajo Tax Commission shall identify from which agency the tax revenue is derived and provide this information to the Office of the Controller, along with the amount of deposits. The Office of the Controller shall segregate the amounts into five (5) separate fund accounts, one for each agency.

Section 4: Distribution

A. One-hundred percent (100%) of the Fund shall be distributed to the chapters annually. The distributions shall be for infrastructure and economic development, as well as other governmental purposes as set forth in duly-approved chapter budgets.

B. The Division of Community Development is delegated administrative responsibility for the distributions which shall occur as follows: 50% shall be divided equally among the chapters within their respective agencies, and the remaining 50% shall be divided proportionately among the chapters based upon the percentage of voters registered in the chapter to the number of voters registered in the Navajo Nation as defined by the most current voter registration.

Section 5: Annual Audit and Report

The Navajo Nation shall include this Fund within its annual audit and report. The report shall be distributed to the Budget and Finance Committee and interested members of the Navajo public.

Section 6: Misappropriated or Misused Funds

Misappropriated or misused funds by chapter staff or officials shall be prosecuted in the courts of the Navajo Nation, as well as by the Ethics and Rules Committee. Additionally, the Navajo Nation shall attempt to stop the misuse or misappropriation, as well as retrieve any money or value it can, pursuant to a policy to be developed by the Budget and Finance Committee.

Section 7: Amendments

Any section herein may be amended upon recommendation by the Office of Navajo Government Development and approval by the Budget and Finance Committee.

