



THE NAVAJO NATION

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Public Ruling **Taxability of Pre-Construction Activities** **under the Navajo Nation Sales Tax and Business Activity Tax**

This Public Ruling addresses the applicability of the Navajo Nation Sales Tax ("Sales Tax") and the Navajo Nation Business Activity Tax ("BAT") to pre-construction activities under construction contracts for projects on the Navajo Nation. The Office of the Navajo Tax Commission ("ONTC") hereby clarifies that construction contracts for projects located on the Navajo Nation are fully taxable under the Sales Tax and BAT, whereas pre-construction activities (i.e. architectural and engineering services) undertaken off-reservation and procured under a separate contract are not taxable under Navajo Nation tax laws.

Taxation of Construction Contracts for Projects on the Navajo Nation

Construction contracts for projects on the Navajo Nation are taxable under both the Sales Tax and the BAT. As it stands, the Sales Tax imposes a 5% tax to the full contract price of construction projects undertaken on the Navajo Nation and the BAT imposes a 5% tax to business activities occurring on the Navajo Nation.

Sales Tax Regulation §6.124 (Relationship between Sales Tax and Business Activity Tax) provides guidance on the application of those respective taxes in relation to taxable activities. Part B of that section states "[i]f the Sales Tax and Business Activity Tax both apply to a particular transaction, the Sales Tax must be paid on such transaction, and then the seller may exclude that portion of the sale from any reporting due under the Business Activity Tax." A construction transaction example is provided where a taxpayer is required to pay the Sales Tax on their gross receipts, and then exclude those receipts in determining their remaining BAT liability.

Taxation of Pre-Construction Activities completed off-reservation

Pre-construction activities procured under a contract separate from the general construction contract for on-reservation activity will not be subject to the Sales Tax; whereas pre-construction services included under the general construction contract for work on the reservation will be taxed under that general construction contract.

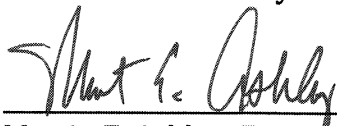
Sales Tax Regulation §6.106 (Services Occurring within and without the Navajo Nation) states “the taxpayer shall be responsible for paying the Sales Tax only on gross receipts received for that portion of the work when the taxpayer is physically located within the Navajo Nation.” In taxing professional services, Sales Tax Regulation §6.110 instructs “[t]he only relevant issue is where the work is performed...[t]he tax does not apply to work performed outside the Navajo Nation, even when it is done for clients within the Navajo Nation.” Together, those sections exclude tax jurisdiction for work completed off-reservation, even if completed for on-reservation consumers.

However, pre-construction activities obligated under a general contract where terms of performance are tied to Navajo Nation trust lands, will be taxed under Navajo Nation tax laws. Those activities, which are procured under a single construction contract for on-reservation activity, have too strong a nexus to Navajo Nation trust lands to distinguish between on and off-reservation activities.¹

Thus, pre-construction services completed off-reservation under a subcontract separate from the general construction contract for on-reservation projects will be exempt from Navajo Nation taxes, whereas if those services are obligated under a single general contract those preconstruction activities will be subject to the Sales Tax.

This ruling is effective upon the date of issuance and shall remain in effect, until withdrawn by ONTC or suspended or rendered invalid by a change in statute or regulation. If you have any questions, please contact the Office of the Navajo Tax Commission at (928) 871-7507.

Issued on this 6th day of November, 2013



Martin E. Ashley, Executive Director
Office of the Navajo Tax Commission

¹ The BAT will be administrated in the same manner as the Sales Tax as BAT is imposed on the source-gains of a branch (person) engaged in trade or commerce, wholly or in part on the Navajo Nation.