

**HEALTHY DINE NATION  
JUNK FOOD TAX REGULATIONS**  
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11.101. **TITLE**

This ordinance is called the Junk Food Tax Regulations.

11.102. **AUTHORITY**

The Navajo Tax Commission promulgates this chapter pursuant to 24 N.N.C §103 and 2 N.N.C. § 3353.

11.103. **SCOPE AND APPLICATION**

The regulations contained in this ordinance apply to the Healthy Dine Nation Act of 2014 (“Junk Food Tax”).

11.104. **DEFINITIONS**

Subject to additional definitions, if any, contained in the subsequent paragraphs of this chapter, and unless the context otherwise requires, in this chapter:

A. “Junk food” means ‘minimal-to-no nutritional value food’ as defined by the Junk Food Statute.

11.105. **RATE OF TAX**

A. Effective April 1, 2015, the rate shall be two percent (2%) of gross receipts. The 2% rate shall apply to all gross receipts received for junk food sold after April 1, 2015.

11.106. **SALE OF JUNK FOOD**

A. The Junk Food Tax applies to the sale of junk food when the transfer of ownership and/or risk of loss occur within the Navajo Nation. The tax does not apply to sales of junk food when the sale takes place outside the Navajo Nation. This is true even when the junk food will be brought into or consumed on the Nation. The tax does apply to sales of junk food when the sale occurs within the Navajo Nation but the junk food will be taken or used outside the Nation.

Example 1: B purchases a candy bar in Gallup, New Mexico, which is outside the Navajo Nation. He pays for the candy bar at the Gallup location of the seller, and ownership of the candy bar transfers to him at that point. The candy bar is then taken to his home in Window Rock, Arizona, which is within the Navajo Nation. The sale occurred outside the Navajo Nation, so the Junk Food Tax does not apply to the sale of the candy bar.

Example 2: C negotiates the purchase of an order of junk food in Gallup whereby the junk food will be delivered to her office in Window Rock, Arizona, and she will make the payment for the junk food at the time and place of delivery, with ownership transferring to her at that point. The Junk Food Tax does apply to this transaction, because the transfer of ownership and transfer of risk of loss take place within the Navajo Nation.

Example 3: D is a hardware store located within the Navajo Nation. E purchases junk food at D that will be consumed at E’s home in Gallup, New Mexico, outside the Navajo Nation, and E picks up the junk food at the time of purchase; the transfer of ownership occurs at the store, within the Navajo Nation. The Junk Food Tax does apply to D’s gross receipts, as the transfer of ownership occurred within the Navajo Nation.

B. 1. The location of the seller’s business is irrelevant in determining the taxability of the gross receipts.

Example: XYZ lumber company from Gallup sells junk food within the Navajo Nation. The company has no retail location on the Navajo Nation, but does deliver to customers located in the Navajo Nation. The Junk Food Tax does apply to the gross receipts from

the sale of junk food so long as the transfer of ownership occurs within the Navajo Nation.

2. When the vendor has no retail location within the Navajo Nation but rather makes delivery of junk food to a buyer who is located within the Navajo Nation, the sale should be classified on the Form 1100 as H – Other, not A – Retail. Classification A on the Form 1100 is only to be used when the sale is made at a retail location operated by the vendor and physically located within the Navajo Nation.

- C. When delivery takes place within the Navajo Nation, the presumption will be that the sale occurred within the Navajo Nation, and the taxpayer challenging such presumption will have the burden of proving that the sale occurred outside the Navajo Nation.
- D. Sales for resale are exempt from the tax. However, this exemption only applies if there is a subsequent sale of the junk food. If the sale is made to the final consumer, then the sale is a retail sale and subject to the tax.

#### 11.107. **CONSIGNMENT SALES**

A. In consignment sales, a consignor turns over a junk food good to a consignee, who is then responsible to act as the agent for the consignor in the retail sale of the junk food good. The transaction between the two parties is not a sale for resale, since title does not transfer. Rather, the consignor retains ownership, with the consignee merely obtaining physical possession and responsibility for making the retail sale on behalf of the consignor/owner. Ownership only transfers once, when the junk food good is sold at retail. The consignor/owner pays the consignee a fee for being responsible for making the retail sale.

B. The Junk Food Tax applies to the gross receipts received by the person making the sale. Therefore, unless an exemption applies, the tax applies to the gross receipts received by the consignor/owner, and the Sales Tax applies to the fee received by the consignee for the service of selling the junk food.

Example: D makes candy. She has a consignment arrangement with Z's Trading Post, where Z sells the candy and turns the gross receipts over to D; Z receives a commission from D for each sale. D retains ownership of the candy until Z sells it; Z never owns the candy but rather simply has physical possession of it in order to sell it. The Junk Food Tax does apply to D's gross receipts from the sale of the candy. The Sales Tax does apply to Z's commission, since that is gross receipts he receives for performing a service, that of selling the candy on D's behalf.

#### 11.108. **LOCAL TAX**

The exclusion from gross receipts for reimbursement for state taxes includes any portion of state taxes that are imposed by a county or municipality.

#### 11.109. **SALES BY AND TO NON-PROFIT CORPORATIONS**

A. Sales by non-profits: In order to claim the exemption provided for in Sales Tax §609(C)(3), a non-profit corporation must submit documentation to the Office of the Navajo Tax Commission of its non-profit status and obtain a certification of exemption from the Office. Based upon the documentation, the Office of the Navajo Tax Commission will determine if the non-profit status applies to the corporation's sales within the Navajo Nation or whether such sales constitute unrelated business subject to the junk food tax.

B. Sales to non-profits: Because the legal incidence of the Navajo Junk Food Tax is on the seller, the identity of the buyer is irrelevant in determining whether or not the Junk Food Tax applies to a particular transaction. Therefore, unless the seller or good is independently exempt from the tax, sales to non-profits are subject to the tax.

**11.110. MAIL ORDER; THIRD-PARTY COMMERCIAL CARRIER**

- A. The Junk Food Tax applies to mail order transactions where the seller is located within the Navajo Nation and the transfer of ownership occurs within the Navajo Nation.
- B. The Junk Food Tax does not apply to mail order transactions where the seller is located outside the Navajo Nation.
- C. Mail order transactions include those utilizing the United States Postal Service and any third-party commercial carrier, such as United Parcel Service or Fed Ex.

**11.111. RELATIONSHIP WITH TOWNSHIP AND CHAPTER TAXES**

For purposes of taking the credit provided in Section 610 of the Sales Tax, when a taxpayer pays Kayenta Sales Tax to the Kayenta Township or pays any governance-certified chapter pursuant to a duly-enacted chapter tax ordinance, the gross receipts upon which that tax has been paid should not be included in the gross receipts reported to the Office of the Navajo Tax Commission on the Form 600.

Example: ABC Company has three stores: one in Kayenta, one in To’Nanees’Dizi, and one in Chinle. ABC pays the Kayenta Tax on its sales at the Kayenta location and the To’Nanees’Dizi Sales Tax on its sales at the To’Nanees Dizi location. When ABC is reporting and paying the Navajo Sales Tax on Form 1100, it should not include any gross receipts from the Kayenta store that have already been taxed by Kayenta or any gross receipts from the To’Nanees’Dizi store that have already been taxed by To’Nanees’Dizi. If there are items sold at either location that are not subject to the chapter taxes, but are subject to the Navajo Sales Tax, then the Sales Tax does apply to ABC’s gross receipts from the sale of these items, and ABC should include them on the Form 1100.

**11.112. PASS-THROUGH OF JUNK FOOD TAX TO BUYER**

The legal incidence of the Junk Food Tax is on the seller of the junk food, and the seller is responsible for filing the tax returns and making the payment. However, there is nothing in the Junk Food Tax that prohibits the seller from passing the tax along to the buyer; the Junk Food Tax is silent on that issue. The Office of the Navajo Tax Commission neither requires nor prohibits a seller from passing the tax through to the buyer.

**11.113. RELATIONSHIP BETWEEN SALES TAX AND JUNK FOOD TAX**

- A. Gross receipts for the sale of junk food items are subject both to the Sales Tax and the Junk Food Tax.
- B. If the Sales Tax and the Junk Food Tax both apply to a particular transaction, the Sales Tax must be paid on such transaction, and then the seller must also report and pay the Junk Food Tax for the sale of junk food items. The seller does not have the option of deciding which tax to pay.

Example: A engages in retail of junk food within the Navajo Nation. This activity constitutes a retail sale, so the Sales Tax applies, and the Junk Food Tax also applies, as the retail activity includes the sale of junk food items. A is required to pay the Sales Tax on his gross receipts, and is also report and pay those receipts for the sale of junk food items.

- B. The terms and applications of the Sales Tax will be used to interpret any ambiguities which may arise under administration of the Junk Food Tax.

**11.114. RESERVED**