

NAVAJO NATION CODE
TITLE 24. TAXATION
CHAPTER 11. HEALTHY DINÉ NATION ACT OF 2014

§ 1101. Short title

The tax imposed by this Chapter shall be called the “Healthy Diné Nation Act of 2014”.

§ 1102. Purpose

The Navajo Nation Council hereby enacts this tax for the privilege of engaging in retail 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.

§ 1103. 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 from all “Unhealthy Foods and Beverages” sold for a period (the “Unhealthy Gross Receipts”), and then multiplying the Unhealthy Gross Receipts by the applicable tax rate.

§ 1104. Legal Incidence and Responsibility for Payment

The person liable for the payment of the tax imposed by this Chapter is the person receiving the Consideration from the sale of Unhealthy Foods and Beverages.

§ 1105. Rate of Tax

The tax rate shall be two percent (2%) of a Person's Unhealthy Gross Receipts (.02 x Unhealthy Gross Receipts).

§ 1106. Administration

All provisions of the Uniform Tax Administration Statute apply to this Chapter. The Office of the Navajo Tax Commission is charged with the administration of this tax. The Office of Navajo Tax Commission shall retain five percent (5%) of all tax revenue collected under this Chapter as a fee to offset the costs of administration.

§ 1107. Definitions

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

- A. “Candy” means a preparation of sugar, honey, molasses, fructose, syrup, or other natural or artificial sweeteners and flavorings, including in combination with chocolate, fruits, nuts, popcorn, or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” includes but is not limited to the following sweetened confectionery snack items: rock candy, powdered candy (e.g. pixie sticks), gel candies, chewing gum (excluding nicotine gum); chocolates; candy bars; bonbons; gum drops; jellies and gummies; jelly beans; imperials; caramels; lollipops; stick candy; hard candy and lozenges (excluding cough drops and nicotine lozenges); taffies; candy wafers; fudges; Italian creams; nougats; nut brittle; chocolate or sugar covered fruits and nuts; glazed or candied fruits and nuts; fruit roll-ups; sweetened popcorn; marshmallows; licorice; cereals and cereal products mixed with or covered with molasses, sugar or other sweetening agent; and all similar sweets however designated. "Candy" shall not include any preparation requiring refrigeration.
- B. “Chips” means any type of prepackaged snack food high in sodium and saturated fat, that is fried, baked, toasted, or dried. "Chips" are typically crispy, savory, and salty, and include but are not limited to: potato chips; tortilla chips; corn chips; vegetable or root chips; pita chips; cheese puffs or curls; pretzels; and all similar crispy snack foods however designated.
- C. “Community Wellness Projects” means Navajo Nation chapter community-based, community-owned wellness projects to address improvements to the physical and social environment of the community because of the need to prevent and/or reduce the incidence of obesity and Type 2 Diabetes Mellitus. Projects may include: farming and vegetable gardens; greenhouses; farmers' markets; healthy convenience stores; clean water; clean communities; wellness/exercise equipment and supplies; skate parks; health classes; parks; traditional, intergenerational, and contemporary wellness; traditional and non-traditional healthy food preparation classes; food processing and storage facilities; health food initiatives; community food cooperatives; playgrounds; basketball courts; walking, running, biking trails; picnic grounds, swimming pools; emergency preparedness; agricultural, recreational, health, youth clubs; library; Navajo traditional craft classes, equine therapy, health coaching; and any other community-based wellness projects to address improvements to physical and social environment of the community that are planned, implemented, directed, and reported by members of the Navajo Nation communities.
- D. “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.

- E. “Energy Drinks” means both carbonated and non-carbonated pre-packaged beverages containing stimulant drugs, including but not limited to stimulants such as caffeine, which are marketed to provide an extra boost in energy, promote wakefulness, maintain alertness, and provide cognitive and mood enhancement; and all similar articles however designated.
- F. “Frozen Desserts” means any sweet food or beverage made by freezing liquid or semisolids, based on naturally and/or artificially flavored water, fruit purees, dairy or dairy substitutes, or custards, which may be combined with fruits, nuts, candy, sweets, or other ingredients. "Frozen Desserts" shall include, but not be limited to prepackaged and non-prepackaged: ice cream (and novelties containing ice cream such as ice cream sandwiches, popsicles, cones, cakes, and milkshakes); frozen custard; frozen yogurt; gelato; sherbet; sorbet; slushies; Italian ices; snow-cones; shakes; pudding popsicles; fruit popsicles containing less than 100% Natural Fruit Juice; and all similar articles however designated. "Frozen Desserts" shall not include all natural fruit and/or vegetable smoothies provided they are comprised solely of fruits and/or vegetables, and may contain healthy additives such as: yogurt, milk; vitamins and minerals; or protein powder.
- G. “Unhealthy 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 of Unhealthy Food and Beverages, whether for profit or not, conducted wholly or partially within the Navajo Nation.
- H. “Navajo Nation” means all areas within the territorial jurisdiction of the Navajo Nation government as defined by 7 N.N.C. § 254.
- I. “Non-Prepackaged” means goods produced at the retail location or eating establishment.
- J. “Prepackaged” means commercially produced and packaged/wrapped /sealed food goods ready for retail sale and consumption.
- K. “Sweetened Baked Goods” means baked or fried food products that are high in saturated fat and/or sugar, may contain flour, eggs, dairy, shortening, oil, butter, baking powder, sugar or other sweeteners, natural or artificial flavorings, and which are prepackaged and non-prepackaged. These include but are not limited to: baked or fried dough; sweet breads; sweet rolls and buns; biscuits; bagels; croissants; cakes; pies; muffins; cookies; brownies; donuts; tarts; flans; tortes; bars; scones; danish; pastries; and all similar sweetened baked foods however designated; and mixes for the above items. This shall not include the following items if unsweetened: breads; rolls; buns; English muffins; bagels; biscuits; croissants; tortillas; and all similar unsweetened

baked breads however designated.

- L. “Sweetened Beverages” means nonalcoholic drinks that are sweetened with sugar or other natural and artificial sweeteners, including calorie free/diet sweeteners, whether carbonated or noncarbonated, in any form, sold for human consumption. It shall include beverages in bottles or cans or served from a fountain dispenser or other source, such as: soda; sweetened flavored water; sports drinks; Energy Drinks; pre-sweetened coffee and tea; sweetened flavored milk drinks (such as chocolate milk); milkshakes, slushies, and other beverages made of Frozen Desserts; juice drinks containing less than 100 percent (100%) Natural Fruit Juice, and/or Vegetable Juice; a Powder, or Base Product as a liquid for sale. It shall not include: alcohol; baby formula; plain milk without sweeteners or flavoring; yogurt based drinks; soy milk; rice milk; almond milk; flavored and unflavored water without sweetener; protein drinks and powders, and other formulated food intended as a meal replacement;
- M. “Unhealthy Foods and Beverages” means Candy, Chips, Sweetened Baked Goods, Frozen Desserts, and Sweetened Beverages, and such other foods and beverages as the Navajo Tax Commission may designate as unhealthy from time to time in the Tax Regulations.
- N. “Sweetener” includes natural sweeteners such as sugar, syrups, honey, and agave, as well as artificial sweetener, such as aspartame, saccharin, sucralose, stevia, cyclamate, xylitol, mogrosides, and many others.
- O. “Natural Fruit Juice or Fruit Juice” means the original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of fruit juice concentrate of the liquid resulting from the restoration of fruit concentrate or the liquid resulting from the restoration of water to dehydrated fruit juice.
- P. “Natural Vegetable Juice or Vegetable Juice” means the original liquid resulting from the pressing of one or more vegetables. Liquid resulting from the reconstitution of vegetable juice concentrate or the liquid resulting from the restoration of water to dehydrated vegetable juice.
- Q. “Powder or Base Product” means a solid mixture of basic ingredients, including sugar, used in making, mixing or compounding soft drinks by mixing the powder of other base product with water, ice syrup, simple syrup, fruits, vegetables, fruit juice or any other product suitable to make a sweetened beverage.

§ 1108. Navajo Nation Government

- A. Sales by enterprises and other business entities 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 thereof, shall be subject to the tax imposed by this Chapter.

§ 1109. Exemptions and Exclusions

- A. The tax imposed by this Chapter does not apply to Unhealthy Gross Receipts generated directly by the following:

1. Sales for resale;
2. Sales, other than sales from an unrelated trade or business as defined in §§ 511 – 513 of the Internal Revenue Code, by any person operating exclusively for non-profit or charitable purposes, and recognized as such pursuant to §501(C)(3) and 501(C)(19) of the United States Internal Revenue Code at the time of sale;
3. Sales by facilities engaged in childcare, foster care or adoption placement, or battered families and homeless shelters;
4. Sales by itinerant salespersons;
5. Occasional sales by persons who are not regularly engaged in the business of selling personal or real property or services, which total less than five thousand (\$5,000) dollars per calendar year;
6. Sales by educational institutions, including primary and secondary schools, colleges, vocational, and job training programs;
7. Sales by hospitals and health-care organizations or facilities;
8. Sales from coin-operated vending machines of any type;
9. Sales paid for by coupons issued by the United States Department of Agriculture under the Food Stamp Act of 1977 (P.L. 95-113);
10. Sales paid for by vouchers issued under § 17 of the Child Nutrition Act (P.L. 95-627 and P.L. 99-669);

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

§ 1110. Credits

There shall be no credits. A person shall not be permitted to 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 sub-unit.

§ 1111. 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 February 15, May 15, August 15, and November 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 signed by a specified person.
- C. No return need be filed by any person who is exempt under §1109, provided that the Office of the Navajo Tax Commission may require such person to file the information necessary to establish its exempt status.

§ 1112. 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.

§ 1113. 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 for which the records relate.

§ 1114. Reserved

§ 1115. Reserved

§ 1116. 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. One hundred percent (100%) of the Healthy Dine Nation Act of 2014 revenue collected from retail establishments located in the Navajo Nation shall be deposited into the Community Wellness Development Projects Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee and administered by the Division of Community Development; and
- B. The Division shall disburse the funds to the chapters as seed money for leverage to initiate, match, and/or improve community wellness projects.

§ 1117. 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.

§ 1118. 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 the Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are severable.

§ 1119. 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.