



THE NAVAJO NATION

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Public Ruling **Navajo Sales Tax- Taxability of Gift & Phone Cards**

This Public Ruling addresses the applicability of the Navajo Nation Sales Tax to gift cards and phone cards sold by retailers across the Navajo Nation. The Office of the Navajo Tax Commission ("ONTC") hereby classifies gift cards and phone cards as 'personal property' (a term defined in §607(M) of the Navajo Nation Sales Tax Statute) and thus fully taxable as a 'sale' under §607(N) of the Sales Tax Statute and §6.107(A) of the Navajo Nation Sales Tax Regulations.

Applicability of Navajo Sales Tax to Gift Cards and Phone Cards

The Navajo Nation Sales Tax imposes a 5% tax to the sale of personal property. Section 603 of the Navajo Nation Sales Tax Statute ("Statute") compels a tax on the gross receipts of a person,¹ and determines the tax by calculating the gross receipts for a period and multiplying the amount by 5% (the applicable tax rate). Gross receipts are defined under Statute §607 as the total amount of money, credit or economic benefit received from the sale of both real and personal property. Thus, the Navajo Nation Sales Tax applies to transactions occurring on the Navajo Nation for the sale of personal property and the financial benefit of such exchanges must be reflected in the retailer's gross receipts.

As items purchased for consideration which guarantee the consumer a redeemable balance for later use towards goods and services, both gift cards and phone cards qualify as personal property for Navajo Nation Sales Tax purposes. In its definition of personal property, Statute §607(M) includes "any tangible property which may be seen, touched, weighed or measured [and] goods purchased for use in the performance of any service." Upon purchase, the consumer of a gift card or phone card retains a redeemable balance for future purchase of goods or delivery of services.² A card received in return for monetary consideration³ is the tangible property that a customer will carry and produce when that consumer seeks to redeem the value for goods or performance of any services the gift card or phone card guarantees.

¹ "Person" is defined in the Uniform Tax Administration Statute as "any organization, whether a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, company, corporation, or government (other than the government of the Navajo Nation and any wholly owned subdivision or enterprise of the Navajo Nation government), or any part, division, or agency of any of the foregoing, and an individual or group of individuals."

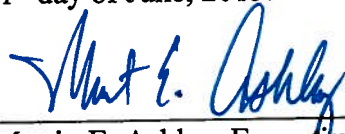
² In its state statutes, Arizona defines gift cards as "any certificate, gift card or electronic gift card or any other medium...for which the issuer has received payment for the full face value of full banked dollar value of the card for the future purchase or deliver of good or services." Ariz. Rev. Stat. Ann. §44-7401.

³ §607(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."

As the purchase of gift or phone cards result in the transfer of ownership and possession of personal property for use or enjoyment of the goods or performance of any services, both transactions for consideration qualify as a 'sale' under §607(N) of the Statute. Section 607(N) sales 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."⁴ Gift and phone cards purchased by consumers are indeed security for future redemption of goods or services, and sales of those items on the Navajo Nation fall under the scope of Statute §607(N).

In many cases, the gift cards and phone cards purchased from Navajo Nation retailers are redeemed or used at off-reservation locations. For Navajo Sales Tax purposes, this distinction is not detrimental to application of the Sales Tax. The language of Regulation §6.107(A) applies the Sales Tax to all sales that occur on the Navajo Nation regardless of whether the goods or services will be taken or used outside of the Navajo Nation.⁵ As a sale of personal property that occurs on the Navajo Nation, transactions for the purchase of gift cards and phone cards are taxable items under the Navajo Nation Sales Tax. As Section 604 of the Statute places the legal incidence and responsibility for payment of the Sales Tax on the person receiving the gross receipts from the sale of those gift cards and phone cards,⁶ the retailers selling such items are responsible for the reporting and payment of Navajo Nation Sales Tax associated with such sales.

Issued on this 21st day of June, 2013.



Martin E. Ashley, Executive Director
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⁴ One may assert that the cards received after purchase carries no value, rather the value is an intangible contract for services and thus not personal property under the Statute. However, Statute §607(M) 'personal property' definition also incorporates "intangible property which cannot be physically perceived by the human senses...and other intangible items of value or legal rights of any kind."

⁵ Sales Tax Regulations §6.107(A) "The Sales Tax applies to the sale of personal property when the transfer of ownership and/or risk of loss occur within the Navajo Nation....The tax [applies] to sales of goods when the sale occurs within the Navajo Nation but the goods will be taken or used outside the Nation."

⁶ §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."