

Public Ruling

Navajo Sales Tax

Public Law 93-638 Contracts

Public Law 100-297 Contracts

A ruling has been requested regarding the application of the Sales Tax to Public Law 93-638 and Public Law 100-297 contracts (hereafter referred to as "638 contracts"). There are two issues that arise. First is the application of the tax to persons with whom the Navajo Nation or tribal organization (hereafter referred to as "Navajo Nation") enters into agreements, when the Nation is acting in its capacity as a 638 contractor and spending money from the 638 contract. Second is the application of the tax to the portion of the 638 contract that is used by the 638 contractor itself.

Previously, under the Business Activity Tax (BAT), subcontractors to 638 contractors were not subject to the tax, since subcontractors were exempt from paying the tax if the general contractor was exempt. The Sales Tax does not include similar language. Pursuant to Section 609(a) of the statute, the only time subcontractors are exempt under the Sales Tax is if the general contractor assumes responsibility for paying the tax and issues the subcontractor an exemption certificate. Therefore, under the Sales Tax, the relevant issue is not the existence of a subcontractor/contractor relationship, but whether a retail sale is taking place. Sales for resale are exempt from the Sales Tax, but retail sales are subject to the tax. Therefore, it must be determined whether the agreement entered into by the Navajo Nation, expending 638 funds, constitutes a retail sale or a sale for resale.

In 638 contracts, the Navajo Nation assumes the responsibility for the planning, conduct, and administration of programs, services, functions, or activities that are otherwise provided to the Nation and its members by the federal government pursuant to federal law. The Navajo Nation then enters into subsequent agreements with persons who will perform some of the services that the Nation is required to undertake under the 638 contract. Such agreements are necessary when it is not feasible for the 638 contractor to perform the services in-house. When the Navajo Nation enters into an agreement with Party A, Party A is performing a service directly for the Nation; the Nation is not reselling that service to the federal government.

Therefore, even though the Nation may be described as a prime or general contractor and Party A as a subcontractor, their transaction is really a retail sale, and the seller's gross receipts are subject to the Sales Tax.

The next issue that arises is how to handle the remainder of the 638 contract that is used by the Navajo Nation department internally and not spent through agreements with other parties; in other words, how the Sales Tax applies to money from the 638 contract that the

department uses for operating expenses such as salaries and office supplies. Because the Nation is assuming certain responsibilities of the federal government when it enters into a 638 contract, money used for these purposes does not constitute gross receipts from the sale of a service. The Nation is not selling its services to the federal government; it is rather replacing the federal government in the performance of a particular service that the federal government is required to provide for Indian tribes. Therefore, since there is no retail sale involved when the Nation receives the money necessary to operate its program, the Sales Tax does not apply to that portion of the 638 contract.

Example:

The Navajo Nation Historic Preservation Department (HPD) has a 638 contract with the Secretary of Interior to provide cultural resource management services for the Bureau of Indian Affairs (BIA) Branch of Roads. As part of the contract, HPD enters into an agreement with Party A who performs cultural activities relating to BIA roads. This agreement between HPD and Party A is considered a subcontract under the overall 638 contract. The sale of services from Party A to HPD is a retail sale; HPD is not reselling that service to the BIA. Therefore, Party A's gross receipts under the agreement with HPD are subject to the Sales Tax. The Sales Tax does not apply to the money that HPD receives under the contract from the federal government for salaries, indirect costs, operating supplies, etc.

This ruling shall remain in effect, until withdrawn by the Office of the Navajo Tax Commission or superseded 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) 871-7113.

Issued this 24th day of December, 2012



Martin E. Ashley, Executive Director

Office of the Navajo Tax Commission