



August 22, 2014

Public Ruling

Administration of the ‘Elimination of the Sales Tax on Fresh Fruits, Fresh Vegetables, Water, Nuts, Seeds and Nut Butters’ under the Navajo Nation Sales Tax

This Public Ruling addresses revisions to the Navajo Nation Sales Tax (“Sales Tax”) in accordance with Navajo Nation Council Resolution CJA-05-14. The Office of the Navajo Tax Commission (“ONTC”) hereby clarifies implementation and administration measures of ‘Elimination of the Sales tax on Fresh Fruits, Fresh Vegetables, Water, Nuts, Seeds, and Nut Butters’.

In reporting gross receipts under the Sales Tax, the tax-exempt categories/items identified below are excludable. In accordance with 2 N.N.C. § 221, the effective date for administration of the revised Sales Tax provisions will be October 1, 2014.

Fresh Fruits and Fresh Vegetables

As amended, Sales Tax §607 F. defines “Fresh fruits and fresh vegetables” as “produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage.” “Fresh” is hereby further defined as: whole, raw, single, bagged, in containers, or otherwise. Items appearing in the *tax-exempt* categories below are deemed qualifying fresh fruits and fresh vegetables.

Tax-exempt qualifying *fruit* include:

- apples
- citrus fruits
- melons
- stone fruits (i.e. apricots, nectarines, peaches, plums, prunes, cherries, etc.)
- tropical fruits (i.e. bananas, kiwi, fruit, mango, coconut, guava, pineapple, etc.)
- other fruits (i.e. dates, figs, avocados, passion fruit, etc.)
- berries
- grapes
- pears

Tax-exempt qualifying *vegetables* include:

- bean and peas
- cucumbers
- eggplants
- greens
- mushrooms
- onions
- other vegetables (i.e. sprouts, artichokes, asparagus, brussel sprouts, okras, celeries, carrots, corn, cauliflower, broccoli, beets, etc.)
- peppers
- potatoes
- radishes
- squashes
- tomatoes

Tax-exempt qualifying herbs and spices include:

- parsley
- sage
- basil
- oregano
- bay leaves
- ginger roots
- horseradish
- garlic
- fennel
- thyme
- rosemary
- dill
- chives
- cinnamon

Tax-exempt qualifying special and ethnic include:

- bok choy
- turmeric
- Chinese flowering cabbage
- yucca
- bread fruit
- sumac berries
- juniper

Tax-exempt qualifying raw, uncooked unprocessed by temperature modification include:

- baby carrots
- frozen vegetables or fruits without added seasonings or ingredients
- fresh fruits and vegetables cut & package at retail store
- salad bars at all retail establishments
- any prewashed, sliced/precut fruits and vegetable, fruit and vegetable mixes, prepared salad ready to eat (without disqualifying additives or preservatives)

Non-qualifying *taxable* fruits and vegetables include but not limited to:

- dried fruits or vegetables
- dried mushrooms
- any pickled vegetables and fruits
- canned fruits/vegetables (corn, beans, pears, etc.)
- apple sauce
- any frozen fruits and vegetables with additives of any kind
- frozen meals
- fruit/vegetable juice blends (i.e. orange juice, fruit juice)

Nut Butters

As amended, Sales Tax §607 J. defines “Nut Butters” as “ground nuts blended to make paste or spread.” “Nut butters” is hereby further defined as: ground dry, raw, or roasted, organic or conventionally grown nuts, blended to make a spreadable foodstuff, unrelated to true butter, unflavored, partially fine or grainy, sometimes containing vegetable oils and/or natural sweeteners and/or salt.

Tax-exempt qualifying nut butters include:

- freshly ground nuts/nut mixes on the store premises, sold by weight, with no additives or flavorings
- Examples include:
 - o almonds
 - o hazelnuts
 - o cashews
 - o peanuts
 - o sunflowers
 - o soybeans

Non-qualifying *taxable* nut butters include but not limited to:

- prepackaged/premixed with jelly and/or spread on bread/crackers, etc.
- used as filling or coating for pastry, chocolate, candy, or any other sweet confectionaries (i.e. Reese's® Peanut Butter cups, M&M's® peanut butter, Dove® peanut butter)
- 'snackable' form with crackers and/or precut fruits or vegetables
- with added dairy, cocoa and chocolate (i.e. Nutella®, Jif® chocolate hazelnut/to go).

Nuts

As amended, Sales Tax §607 K. defines "Nuts" as "a fruit consisting of hard or tough shell around an edible kernel." "Nuts" is hereby further defined as: organic or conventionally grown fruit, consisting of a hard or tough shell around an edible kernel.

Tax-exempt qualifying *nuts* include:

- any nuts that are unflavored, whole, crushed, slivered, sliced, and/or shelled/unshelled
- any raw, sprouted, roasted nuts
- solid prepackaged or by weight (in bulk)
- any nuts mix, raw, roasted and/or unsalted

Non-qualifying *taxable* nuts include but not limited to:

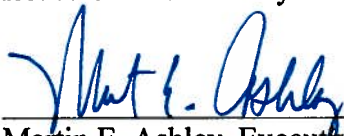
- candy or chocolate bars with nuts filling and/or dipped in crushed/whole nuts
- salted (raw and/or roasted), prepackaged or sold by weight
- fresh fruits dipped in chocolate and crushed nuts
- nuts covered with caramel, chocolate, honey, sprinkles, sugar, yogurt, malt, colored dye, or any other coating
- trail mix with chocolate chips or any other candy
- peanut brittle
- used in combination and/or on pastry or other baked goods
- mixed with cereals such as granola and/or granola bar or health, energy or protein bars
- Examples include:
 - o cinnamon sugar coated candies
 - o Peanut M&M's®
 - o spice coated nuts
 - o caramel coated nuts
 - o French burnt peanuts
 - o glazed nuts
 - o Corn nuts
 - o KIND® fruit and nuts bars
 - o Planters® NUT-rition
 - o Clif® nutritional bars
 - o Powerbar®

Seeds and Water

As amended, Sales Tax §607 R. defines “Seeds” as “the grains or ripened ovules of fruits, vegetables, or plants such as sunflower seeds, flax seeds, pumpkin seeds, mixed nuts without sugared candies.” As amended, Sales Tax §607 W. defines “Water” as “drinking water that has no added sugar or other artificial sweeteners. It includes artisan, fluoridated, mineral, purified, sparkling, spring, or sterile (distilled) water.” At this point, neither definition will be further defined.

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) 871-6681.

Issued on this 22nd day of August, 2014

A handwritten signature in blue ink, appearing to read "Martin E. Ashley", is written over a horizontal line.

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