

SALES TAX REGULATIONS

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6.101. TITLE

This chapter is called the Sales Tax Regulations.

6.102. AUTHORITY

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

6.103. SCOPE AND APPLICATION

The regulations contained in this chapter apply to the Navajo Sales Tax.

6.104. 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. "Itinerant sale" means any transaction engaged in by a person who:

1. engages in door-to-door sales of personal property, or
2. hires, leases, uses, or occupies a temporary structure as defined in subparagraph (E) below.

The sale of services is never an itinerant sale.

B. "Licensed health care practitioner" means physicians, physician assistants, chiropractic physicians, dentists, dental hygienists, osteopathic physicians, doctors of oriental medicine, podiatrists, psychologists, registered and licensed practical nurses, registered midwives, physical therapists, optometrists, occupational therapists, respiratory care practitioners, speech-language pathologists, and clinical laboratories.

C. "Mobile home" means a dwelling structure built on a chassis and fitted with wheels that is intended to be hauled to a usually permanent site.

D. "Motor home" means an automotive vehicle outfitted as a traveling home with self-contained electrical and plumbing facilities.

E. "Temporary structure" means any motor vehicle, tent, trailer, motor home, trailer, shed, or any other similar structure, that is removed from its location at the end of each business day, as distinguished from a permanent structure, which remains in the same place 24 hours a day. The determination of whether a structure is temporary does not depend on the usual use of that type of structure, but rather the use of the particular structure in question.

Example 1: X sells breakfast burritos each day by going around to tribal government offices. This is an itinerant sale, and the Sales Tax does not apply.

Example 2: Y has a mutton stew stand at the flea market; the stand stays in place overnight and contains tables, a fan, and a generator. Her sales are not itinerant sales, and the Sales Tax does apply to Y's gross receipts.

Example 3: Z has a trailer parked at the flea market from which he sells carpet. The trailer stays in the same place 24 hours a day; it is not removed at night. These sales are not itinerant sales, because even though trailers are usually temporary, this one is not removed at the end of the day. The Sales Tax does apply to Z's gross receipts.

6.105. RATE OF TAX

A. Effective July 1, 2018, the rate shall be six percent (6%) of gross receipts. The 6% rate shall apply to all gross receipts received for goods delivered or services performed after July 1, 2018, except as provided in Section 6.105(B). If services are performed or goods are delivered prior to that date, but payment is received after that date, the 5% rate shall apply.

B. Notwithstanding anything in Section 6.105(A) to the contrary, regardless of the date of performance, the 5% rate shall apply to gross receipts from construction contracts which were executed prior to July 1, 2018.

1. With regard to gross receipts from construction contract modifications which were executed after July 1, 2018, if the modification provides for an increase in the total contract amount, the 6% rate shall apply to the difference between the original and the modified contract amount. If a contract modification executed after July 1, 2018 does not increase the total contract amount, then the 5% rate shall apply to the contract modification.
2. Any taxpayer qualifying for the exception in 6.105(B) who applies the 5% rate after July 1, 2018 to a particular construction contract and/or modification, must submit a copy of the construction contract and modifications to the Office of the Navajo Tax Commission together with the taxpayer's quarterly tax return.

6.106. SERVICES OCCURRING WITHIN AND WITHOUT THE NAVAJO NATION

A. If a taxpayer provides services, some of which occurs within the Navajo Nation and some of which occurs outside the Navajo Nation, the taxpayer shall be responsible for paying the Sales Tax only on the gross receipts received for that portion of the work when the taxpayer is physically located within the Navajo Nation.

Example: X is an architect based in Gallup, New Mexico. She is working on a project in Chinle, Arizona in the Navajo Nation and is being paid on an hourly basis. The project required several site visits in Chinle, with the remainder of the work performed outside the Nation. X is responsible for paying the tax on the gross receipts she receives for the work performed in Chinle, but not for the work performed in Gallup.

B. If a taxpayer is not being paid on an hourly basis, the taxpayer must make a reasonable determination of what percentage of total hours worked was within the Navajo Nation, and then apply that percentage to the total gross receipts in determining the taxable gross receipts.

Example: A is an attorney who handled a personal injury case that required some work to be done in Albuquerque, New Mexico, which is outside the Navajo Nation, and some in Window Rock, Arizona, which is within the Nation. Approximately 50% of his work was done in Albuquerque, and 50% in Window Rock. He was not paid on an hourly basis, but rather did the case for a contingency fee, where he received a certain percentage of the amount received by his client. If he receives \$1,000 as a fee, he owes Sales Tax on \$500, since 50% of his work was performed within the Navajo Nation.

6.107. SALE OF PERSONAL PROPERTY

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 does not apply to sales of goods when the sale takes place outside the Navajo Nation. This is true even when the product will be brought into or used in the Nation. The tax does apply to sales of goods when the sale occurs within the Navajo Nation but the goods will be taken or used outside the Nation.

Example 1: B purchases a computer in Gallup, New Mexico, which is outside the Navajo Nation. He pays for the computer at the Gallup office of the seller, and ownership of the computer transfers to him at that point. The computer is then delivered to his office in Window Rock, Arizona, which is within the Navajo Nation. The sale occurred outside the Navajo Nation, so the Sales Tax does not

apply to the sale of the computer, although the fee for delivering the computer to B's office within the Navajo Nation would be subject to the tax as gross receipts received for performing a service, that of delivering the computer.

Example 2: C negotiates the purchase of a computer in Gallup whereby the computer will be delivered to her office in Window Rock, Arizona, and she will make the payment for the computer at the time and place of delivery, with ownership transferring to her at that point. The Navajo Sales 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 lumber at D that will be used at E's home in Gallup, New Mexico, outside the Navajo Nation, and E picks up the lumber at the time of purchase; the transfer of ownership occurs at the store, within the Navajo Nation. The Sales 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 lumber within the Navajo Nation. The company has no retail location in the Nation, but does deliver to customers located in the Nation. The Sales Tax does apply to the gross receipts from the sale of goods 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 goods to a buyer who is located within the Nation, the sale should be classified on the Form 600 as H - Other, not A - Retail. Classification A on the Form 600 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 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 materials. If the sale is made to the final consumer, then the sale is a retail sale and subject to the tax.

Example 1: XYZ lumber company sells lumber to ABC Contractor, who uses the lumber to build a home in Window Rock, Arizona for a customer. XYZ's sale to ABC is a sale for resale; ABC is essentially reselling the lumber to the homeowner. The Sales Tax does not apply to XYZ's gross receipts from the transaction between XYZ and ABC, but the tax does apply to ABC's gross receipts from the sale to the homeowner.

Example 2: XYZ Contractor sells lumber to various departments of the Navajo Nation Government and Navajo Housing Authority for use in the construction of homes. These sales are retail sales, since the buyers are not retailers. They are not buying goods in order to resell them; they are buying the goods in order to use them for their own purposes. Therefore, the seller is actually a retailer, and the Sales Tax does apply to the gross receipts from these sales.

6.108. LEASE TO OWN

Gross receipts from rental agreements, where the rental payment is applied to the purchase price, also known as a "rent-to-own" agreement, are subject to the Sales Tax. However, if the sale of the good is exempt from the tax pursuant to §609(C), the rent-to-own transaction is not taxable.

6.109. CONSIGNMENT SALES

- A. In consignment sales, a consignor turns over a good to a consignee, who is then responsible to act as the agent for the consignor in the retail sale of the 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 good is sold at retail. The consignor/owner pays the consignee a fee for being responsible for making the retail sale.
- B. The Sales 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, as well as the fee received by the consignee.

Example 1: D makes jewelry. She has a consignment arrangement with Z's Trading Post, where Z sells the jewelry and turns the gross receipts over to D; Z receives a commission from D for each sale. D retains ownership of the jewelry until Z sells it; Z never owns the jewelry but rather simply has physical possession of it in order to sell it. The Sales Tax does apply to D's gross receipts from the sale of the jewelry. The Sales Tax does apply to Z's commission, since that is gross receipts he receives for performing a service, that of selling the jewelry on D's behalf.

Example 2: B grows hay within the Navajo Nation. He has a consignment arrangement with Z's Trading Post, where Z sells the hay and turns the gross receipts over to B; Z receives a commission from B for each sale. B retains ownership of the hay until Z sells it; Z never owns the hay but rather simply has physical possession of it in order to sell it. The Sales Tax does not apply to B's gross receipts, as they are sales of an agricultural product by the actual grower. (See 6.113.) The Sales Tax does apply to Z's commission, since that is gross receipts he receives for performing a service, that of selling the hay on B's behalf.

6.110. PROFESSIONAL SERVICES

The Sales Tax applies to all gross receipts received for professional services performed within the Navajo Nation. The only relevant issue is where the work is performed. The tax does not apply to work performed outside the Navajo Nation, even when it is done for clients within the Nation. The tax does apply to work performed within the Navajo Nation for clients based outside the Nation.

6.111. STIPENDS, PER DIEM PAYMENTS

The Sales Tax does not apply to stipends or per diem payments received by members of the Navajo Nation Council, boards of directors of for-profit or non-profit corporations, commissions, or other similar organizations.

6.112. 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.

6.113. LIVESTOCK AND AGRICULTURAL SALES

- A. The exemption provided for in Section 609(C)(2) applies to the actual sale of the livestock or agricultural products by the breeder or grower, when such products are raised or grown within the Navajo Nation.
- B. The exemption does not apply to the sale of goods or services used in the production of such livestock or agricultural products.

Example 1: C operates a trading post in the Navajo Nation. He sells sheep that he buys from the breeder. The Sales Tax does apply to C's gross receipts from the sale of sheep, since he is not the breeder.

Example 2: C operates a trading post in the Navajo Nation. He sells hay that he bought from the grower. The Sales Tax does apply to C's gross receipts from the sale of hay, since he is not the grower.

Example 3: D raises sheep on his farm located in the Navajo Nation. He sells some sheep to his neighbor for use in a squaw dance. The Sales Tax does not apply to D's gross receipts from the sale of sheep, since he is the breeder.

Example 4: D grows hay on his farm located in the Navajo Nation. He sells the hay from a small store he owns that is located within the Nation. The Sales Tax does not apply to D's gross receipts from the sale of hay, since he is the grower.

Example 5: E grows hay on his farm located in Cortez, Colorado, outside the Navajo Nation. He sells the hay from a small store he owns that is located within the Nation. The Sales Tax does apply to E's gross receipts, since, although he is the grower, the hay was not grown within the Navajo Nation.

Example 6: F raises and sells cattle in the Navajo Nation. He buys salt blocks for his cattle from a feed store located within the Navajo Nation. The Sales Tax does apply to the gross receipts of the feed store from selling the salt blocks to E; such gross receipts do not fall within the exception for sales related to livestock.

6.114. SALES BY AND TO NON-PROFIT CORPORATIONS

- A. Sales by non-profits: In order to claim the exemption provided for in Section 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 tax.
- B. Sales to non-profits: Because the legal incidence of the Navajo Sales Tax is on the seller, the identity of the buyer is irrelevant in determining whether or not the Sales 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.

6.115. MONEY ORDER AND WIRE TRANSFERS OF FUNDS

The Sales Tax does not apply to fees received for the sale of money orders or cashiers checks, or the provision of wire transfer of funds or ATM usage.

Example: The ABC convenience store located in Window Rock, Arizona, charges a \$1.00 fee on the sale of each money order. The Sales Tax does not apply to this fee received by the store.

6.116. FINES LEVIED BY GOVERNMENTS; GOVERNMENT-ISSUED PERMITS AND LICENSES

The Sales Tax does not apply to the gross receipts received by a federal, state, or tribal government for fines or for the issuance of permits, licenses, or other similar authorizations to engage in a particular activity.

6.117. REIMBURSEMENT FOR EXPENSES

- A. The Sales Tax does not apply to amounts received by a taxpayer as reimbursement for expenses incurred by the taxpayer during the provision of a service or sale of a good. So long as the invoiced amount is simply reimbursement for actual expenses, the Sales Tax does not apply to such reimbursements. "Actual expenses" only refers to expenses such as hotel, meals, copies, etc., and does not include items such as

employee salaries or other expenses that might serve as the basis for the taxpayer's charge to its customer(s); such items are to be included in the taxable gross receipts.

Example: X is a company that performs certain administrative services for Y. X's invoices to Y (and Y's payments to X) consist solely of the cost of X's employees in performing the service. X's gross receipts are not considered simply reimbursement for expenses, and rather are taxable gross receipts.

- B. If the taxpayer charges a fee that is higher than the actual expense, for example, charging 50¢ per page for copies when the actual cost to the taxpayer is 10¢, the entire amount is taxable under the Sales Tax.
- C. When a taxpayer receives payment for mileage from the customer at or below the approved federal CONUS rate, as found in 41 Code of Federal Regulations §301, this payment is not subject to the Sales Tax. However, if the taxpayer bills the customer for the time spent traveling, this payment is taxable.

Example 1: X is an archaeologist who performs archaeological clearances for homesite lease applicants. The work often requires an overnight stay at a hotel located within the Navajo Nation. X charges his customer for the hotel room and meals, as well as mileage, for which he charges the rate allowed in the federal regulations. The Sales Tax does not apply to these reimbursements.

Example 2: Y is an architect based in Window Rock, Arizona, who has clients located throughout the Navajo Nation. When a job requires a site visit involving travel within the Navajo Nation, he charges his clients his usual hourly rate for the travel time in addition to the time actually spent at the site. The Sales Tax does apply to the total gross receipts received, including those associated with the travel time.

Example 3: Z is an architect based in Albuquerque, New Mexico, who performs services for clients located in the Navajo Nation. When the work requires a site visit within the Navajo Nation, Z charges his clients his usual hourly rate for the travel time between his Albuquerque office and the Navajo Nation site. The Sales Tax applies to his total gross receipts, including those associated with the travel time; provided, however, that Z is entitled to exclude the gross receipts that can be attributed to the travel that occurred outside the Navajo Nation.

6.118. MAIL ORDER; THIRD-PARTY COMMERCIAL CARRIER

- A. The Sales 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 Sales 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 Federal Express.

6.119. MEDICAL SERVICES

When licensed health care practitioners acting as independent contractors provide medical care, such care shall be considered a sale by a medical facility, and therefore the gross receipts for performing such care shall not be subject to the Sales Tax pursuant to Section 609(C)(9).

6.120. VETERINARY CARE

- A. Medical care provided by veterinarians shall be considered as medical care, and therefore the gross receipts from such care are not subject to the Sales Tax pursuant to Section 609(C)(9).
- B. Treatment relating to the care of horses' feet, such as hoof-trimming and horseshoeing care provided by farriers and blacksmiths, shall be considered

medical care, and the gross receipts received by persons for such work are not subject to the Sales Tax pursuant to Section 609(C)(9).

6.121. FUNERAL EXPENSES

- A. Pursuant to Section 609(C)(13), the Sales Tax does not apply to the gross receipts of a funeral home or mortuary from the sale of goods or services directly and necessarily required for human burials.
- B. The Sales Tax does apply to any gross receipts of a funeral home or mortuary from sales of goods or services not directly and necessarily required for human burials.
Example: XYZ Funeral Home sells flowers and plaques as part of a funeral package. The Sales Tax does apply to the gross receipts from the sale of the flowers and plaques.

6.122. 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 600, 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 600.

6.123. PASS-THROUGH OF SALES TAX TO BUYER

The legal incidence of the Navajo Sales Tax is on the seller of the goods or services, and the seller is responsible for filing the tax returns and making the payment. However, there is nothing in the Sales Tax that prohibits the seller from passing the tax along to the buyer; the Sales 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.

6.124. RELATIONSHIP BETWEEN SALES TAX AND BUSINESS ACTIVITY TAX

- A. If the Sales Tax is paid on the gross receipts from a sale of goods or services, the gross receipts are not subject to the Business Activity Tax.
- B. If the Sales Tax and the Business Activity Tax both apply to a particular transaction, the Sales Tax must be paid on such transaction, and then the seller may exclude the sale from any reporting due under the Business Activity Tax. The seller does not have the option of deciding which tax to pay.

Example: A engages in construction activity within the Navajo Nation. This activity is the provision of a Navajo service, so the Business Activity Tax applies, and the Sales Tax also applies, as the activity constitutes a retail sale. A is required to pay the Sales Tax on his gross receipts, and he shall exclude these receipts when determining whether he must file and pay the Business Activity Tax.

6.125. RESERVED

6.126. PUBLIC LAW 93-638 CONTRACTS; PUBLIC LAW 100-297 CONTRACTS

This section applies to situations arising when the Navajo Nation has a contract with the federal government pursuant to either Public Law 93-638 or Public Law 100-297, and a Navajo Nation department or entity is acting as the contractor under the contract.

- A. Navajo Nation as contractor hiring subcontractors: In these contracts, the Navajo Nation assumes the responsibility for planning, conducting, and administering 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 may then enter into subsequent agreements with persons who will perform some of the services that the Nation is required to undertake pursuant to the contract. When the Navajo Nation enters into an agreement with a subcontractor, that subcontractor is performing a service directly for the Nation; the Nation is not reselling that service to the federal government. Therefore, the transaction between the Navajo Nation and the subcontractor is really a retail sale, and the Sales Tax does apply to the subcontractor's gross receipts.
- B. Navajo Nation as contractor using contract funds internally: When the Navajo Nation uses the contract funds internally for such things as operating expenses, rather than spending the funds through agreements with other parties, the Sales Tax does not apply to these funds. 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 contract.

Example: The Navajo Nation Historic Preservation Department (HPD) has a P.L. 93-638 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 X who performs cultural activities relating to BIA roads. This agreement between HPD and X is considered a subcontract under the overall 638 contract. The sale of services from X to HPD is a retail sale; HPD is not reselling that service to the BIA. Therefore, the Sales Tax does apply to X's gross receipts under the agreement with HPD. 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.

6.127. NON-TAXABLE TRANSACTION CERTIFICATES

A taxpayer who is purchasing goods or services from suppliers or subcontractors and reselling them is required to obtain a Non-taxable Transaction Certificate (NTTC) for each supplier/subcontractor. The taxpayer shall complete an application for an NTTC and submit it to the Compliance Department at the Office of the Navajo Tax Commission. The Office will issue appropriate certificates to the taxpayer for distribution to the suppliers/subcontractors.

6.128. TRANSPORTATION SERVICES

Gross receipts generated by providing transportation to medical appointments are subject to the Sales Tax even if such gross receipts are reimbursable by Medicare or Medicaid.

6.129. TELECOMMUNICATIONS SERVICES

Gross receipts generated by the provision of telecommunications services are subject to the Sales Tax.