

**NICOTINE PRODUCTS & ELECTRONIC SMOKING PRODUCTS
TAX REGULATIONS**
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10.101. TITLE

This Chapter is called the Nicotine Products and Electronic Smoking Products Tax Regulations.

10.102. AUTHORITY

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

10.103. SCOPE AND APPLICATION

These regulations apply to the Nicotine Products and Electronic Smoking Products Act, Title 24, Chapter 10 of the Navajo Nation Code.

10.104. DEFINITIONS

Subject to any additional definitions contained in Title 24, Chapter 6, Sales Tax, the following definitions apply to these Nicotine Products and Electronic Smoking Products Tax Regulations:

"Electronic Smoking Product" means any device that can deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic Smoking Product includes any component, part, or accessory of such a device, whether or not sold separately. It includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. An electronic smoking device includes no battery or battery charger when sold separately. "Electronic Smoking Product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

"Nicotine Product" means any commercially processed or manufactured product for human consumption that contains nicotine, whether natural or synthetic. "Nicotine Product" does not include (i) any mixed nicotine and tobacco product included in the definition of Tobacco Product at 24 N.N.C. § 802(2), or (ii) any product designed or used for nicotine cessation that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the federal Food, Drug, and Cosmetic Act.

"Person" means any organization, whether a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, company, corporation, or government, or any part, division, or agency of any of the foregoing, and an individual or group of individuals. In accordance with 24 N.N.C. § 1008, "person" for purposes of the Nicotine Products and Electronic Smoking Products Tax shall include the government of the Navajo Nation and any wholly owned subdivision or Enterprise of the Navajo Nation government.

10.105. RATE OF TAX

Effective October 1, 2025, the Nicotine Products and Electronic Smoking Products Tax shall be imposed at a rate of twenty-two percent (22%) of the gross receipts of all sales of Nicotine Products and the gross receipts of all sales of Electronic Smoking Products.

10.106. SALE OF NICOTINE PRODUCTS AND ELECTRONIC SMOKING PRODUCTS

(A) The Nicotine Products and Electronic Smoking Products Tax applies to the sale of Nicotine Products and to the sale of Electronic Smoking Products when the transfer of ownership or risk of loss occurs within the Navajo Nation. The tax does not apply to sales of Nicotine Products or to sales of Electronic Smoking Products when the sale takes place outside the Navajo Nation. This is true even when the Nicotine Products and the Electronic Smoking Products will be brought into or consumed on the Nation. The tax does apply to sales of Nicotine Products and to sales of Electronic Smoking Products when the sale occurs within the Navajo Nation but the Nicotine Products or the Electronic Smoking Products will be taken or used outside the Nation.

Example 1: **B** purchases a vape pen in Gallup, New Mexico, which is outside the Navajo Nation. **B** pays for the vape pen at the Gallup location of the seller, and ownership of the vape pen transfers to **B** at that point. The vape pen is then taken to **B**'s home in Window Rock, Arizona, which is within the Navajo Nation. The sale occurred outside the Navajo Nation, so the Nicotine Products and Electronic Smoking Products Tax does not apply to the sale of the vape pen.

Example 2: **C** negotiates the purchase of an order of liquid nicotine cartridges in Gallup whereby the liquid nicotine cartridges will be delivered to **C**'s office in Window Rock, Arizona, and **C** will make the payment for the liquid nicotine cartridges at the time and place of delivery, with ownership transferring to **C** at that point. The Nicotine Products and Electronic Smoking Products 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 convenience store located within the Navajo Nation. **S** purchases an e-cigarette at **D**, which will be used at **S**'s home in Gallup, New Mexico, outside the Navajo Nation, and **S** picks up the e-cigarette at the time of purchase; the transfer of ownership occurs at the store, within the Navajo Nation. The Nicotine Products and Electronic Smoking Products Tax does apply to **D**'s gross receipts, as the transfer of ownership occurred within the Navajo Nation.

- (B) The location of the seller's business is irrelevant in determining the taxability of the gross receipts.

Example: XYZ convenience store from Gallup sells e-cigarettes within the Navajo Nation. The company has no retail location on the Navajo Nation, but does deliver to customers located in the Navajo Nation. The Nicotine Products and Electronic Smoking Products Tax does apply to the gross receipts from the sale of e-cigarettes so long as the transfer of ownership occurs within the Navajo Nation.

- (C) When the vendor has no retail location within the Navajo Nation but rather makes delivery of e-cigarettes to a buyer located within the Navajo Nation, the sale should be classified on Form 1000 as H – Other, not A – Retail. Classification A on the Form 1000 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.
- (D) When delivery takes place within the Navajo Nation, the presumption will be that the sale occurred within the Navajo Nation, and the taxpayer challenging such presumption will have the burden of proving that the sale occurred outside the Navajo Nation.
- (E) Sales for resale are exempt from the tax. However, this exemption only applies if there is a subsequent sale of the Nicotine Products or Electronic Smoking Products. If the sale is made to the final consumer, then the sale is a retail sale and subject to the tax.

10.107. CONSIGNMENT SALES

- (A) In consignment sales, a consignor turns over Nicotine Products or Electronic Smoking Products to a consignee, who is then responsible to act as the agent for the consignor in the retail sale of the Nicotine Products and/or Electronic Smoking Products. 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 transfers only one time, when the Nicotine Products or Electronic Smoking Products are sold at retail. The consignor/owner pays the consignee a fee for being responsible for making the retail sale.
- (B) The Nicotine Products and Electronic Smoking Products Tax applies to the gross receipts received by the person making the sale. Therefore, unless an exemption applies, the Nicotine Products and Electronic Smoking Products Tax applies to the gross receipts received by the consignor/owner, and the Sales Tax applies to the fee received by the consignee for the service of selling the Nicotine Products and/or Electronic Smoking Products.

Example: D makes e-cigarettes. D has a consignment arrangement with Z's Trading Post, where Z sells the e-cigarettes and turns the gross receipts over to D; Z receives a commission from D for each sale. D retains ownership of the e-cigarettes until Z sells them; Z never owns the e-cigarettes but rather simply has physical possession of the products in order to sell them. The Nicotine Products and Electronic Smoking Products Tax and the Sales Tax do apply to D's gross receipts from the sale of the e-cigarettes. The Sales Tax also applies to Z's commission, since the commission is gross receipts Z receives for performing a service, that of selling the e-cigarettes on D's behalf.

10.108. 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.

10.109. SALES BY AND TO NON-PROFIT CORPORATIONS

- (A) Sales by non-profits: In order to claim the exemption provided for in 24 N.N.C. §1009(A)(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 Nicotine Products and Electronic Smoking Products Tax.
- (B) Sales to non-profits: Because the legal incidence of the Nicotine Products and Electronic Smoking Products Tax is on the seller, the identity of the buyer is irrelevant in determining whether or not the Nicotine Products and Electronic Smoking Products 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.

10.110. MAIL ORDER; THIRD-PARTY COMMERCIAL CARRIER

- (A) The Nicotine Products and Electronic Smoking Products 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 Nicotine Products and Electronic Smoking Products 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 or any third-party commercial carrier, such as United Parcel Service or Fed Ex.

10.111. PASS-THROUGH OF NICOTINE PRODUCTS AND ELECTRONIC SMOKING PRODUCTS TAX

The legal incidence of the Nicotine Products and Electronic Smoking Products Tax is on the seller of Nicotine Products and/or Electronic Smoking Products, and the seller is responsible for filing the tax returns and making the payment. However, there is nothing in the Nicotine Products and Electronic Smoking Products Tax Act that prohibits the seller from passing the tax along to the buyer.

10.112. RELATIONSHIP BETWEEN SALES TAX AND NICOTINE PRODUCTS AND ELECTRONIC SMOKING PRODUCTS TAX

- (A) Gross receipts for the sale of Nicotine Products and of Electronic Smoking Products are subject to both the Sales Tax and to the Nicotine Products and Electronic Smoking Products Tax.
- (B) If the Sales Tax and the Nicotine Products and Electronic Smoking Products Tax both apply to a particular transaction, the Sales Tax must be paid on such transaction, and then the seller must also report and pay the Nicotine Products and Electronic Smoking Products Tax for the sale of Nicotine Products and for the sale of Electronic Smoking Products. The seller does not have the option of deciding which tax to pay.

Example: A engages in retail of Electronic Smoking Products within the Navajo Nation. This activity constitutes a retail sale, so the Sales Tax applies, and the Nicotine Products and Electronic Smoking Products Tax also applies, as the retail activity includes the sale of Electronic Smoking Products. A is required to pay the Sales Tax on his gross receipts, and is also required to report and pay the Nicotine Products and Electronic Smoking Products Tax on his gross receipts for the sale of Electronic Smoking Products.

- (C) The terms and applications of the Sales Tax will be used to interpret any ambiguities which may arise under administration of the Nicotine Products and Electronic Smoking Products Tax.

10.113. SEVERABILITY

If any provision of these regulations, as amended, or their 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 these regulations that can be given effect without the invalid provision or application, and to this end, the provisions of these regulations are severable.