

**AMENDED AND RESTATED  
TOBACCO PRODUCTS TAX REGULATIONS**

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#### **8.101. TITLE**

These regulations shall be called the Tobacco Products Tax Regulations.

#### **8.102. AUTHORITY**

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

#### **8.103. SCOPE AND APPLICATION**

- (A) These regulations apply to the Tobacco Products Tax Act, Title 24, Chapter 8 of the Navajo Nation Code, as amended by Resolution CO-47-24.
- (B) Except where another definition is provided in these regulations, the provisions of Chapter One of the Navajo Tax Code, the Uniform Tax Administration Statute, and its implementing regulations, shall apply to these regulations.

#### **8.104. DEFINITIONS**

Subject to any additional definitions contained in the Tobacco Products Tax Act, the following definitions apply to these Tobacco Products Tax Regulations:

**"Consumer"** means any person who comes into possession or ownership of a tobacco product by purchasing or otherwise acquiring it for the purpose of using, consuming, or giving away such product.

**"Distributor"** means any person within the Navajo Nation who manufactures, produces, ships, transports, or imports tobacco products into the Navajo Nation or in any manner acquires or possesses tobacco products for the purpose of making the first sale.

**"First sale"** means the first sale or distribution within the Navajo Nation or the first use or consumption of tobacco products within the Navajo Nation.

**"Period"** means one calendar month.

**"Retailer"** means any person engaged in the sale or resale of tobacco products within the Navajo Nation.

**"Sale"** means a transfer of possession or ownership between buyer and seller for a consideration.

**"Tobacco"** means commercially cultivated tobacco, the leaves of which are processed chiefly for use in cigarettes, cigars, snuff, plug or chewing tobacco, or for smoking in pipes.

**"Tobacco product"** means any commercially processed and/or manufactured product for human consumption that contains tobacco, including cigarettes.

### 8.105. RATE OF TAX

These regulations implement the Tobacco Products Tax Act, which imposes and requires payment of tax for the first sale by any Retailer or Distributor of tobacco products at the rates in Tax Table 8-A below:

Tax Table 8-A

Tobacco Product	Tax Rate
Cigarettes	12.5¢ on each cigarette
Smoking tobacco, snuff, etc. Smoking tobacco, snuff, chewing tobacco, cut and granulated tobacco, shorts and refuse or fine cut tobacco, refuse, scraps, clippings, cuttings and sweepings of tobacco Does not include tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption	\$3.85 per ounce or major fraction thereof
Cavendish, plug or twist tobacco	\$1.25 per ounce or fractional part thereof OR If packaged for sale to a consumer in a package of less than 1.2 ounces, the minimum tax rate must be \$2.50 per package. When more than one package is packaged together, each package shall be taxed separately.
Small cigars (weighing $\leq$ 3 lbs./1000 or fractional part thereof)	\$2.50 per 20 cigars
Cigars (Cigars made of tobacco or any tobacco substitute except small cigars included at paragraph 4 above).	\$3.62 on each cigar

All other tobacco products (Other tobacco products not included under 1-5)	22% of the retail price of the product
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**Note for interpreting Table 8-A:**

When the regulations say “Major fraction thereof,” the fraction should be rounded up or down to the nearest whole ounce for calculating the tax.

If the regulations say “fractional part thereof,” the entire weight of the product is made part of the calculation, with no rounding up or down.

When the regulations do not specify “major fraction thereof” or when they say “fractional part thereof,” the calculation does not include any rounding.

**8.106. TAX LICENSES**

- (A) Prior to engaging in the sale or resale of, or making available for sale, tobacco products within the Navajo Nation, Retailers and Distributors shall obtain the appropriate state license(s) from the authorizing state agency or agencies required for the state in which the tobacco products will be sold.
- (B) All Distributors and Retailers licensed by Arizona, Utah, or New Mexico shall provide a copy of their state license(s) to the Office of the Navajo Tax Commission.

**8.107. REQUIRED RETURNS, PAYMENTS**

- (A) The forms and payment of tax required under the Tobacco Products Tax Act are due on the 15th day of the month following the period to which the tax applies.
- (B) Except as provided in Section 8.107(D), Distributors are responsible for filing Forms 800 D and 801 D.
- (C) If a Retailer sells or makes available for sale any tobacco product for which the tax has not already been paid by a licensed Distributor, the Retailer is responsible for filing Forms 800 R and 801 R.
- (D) In accordance with an Intergovernmental Agreement between the Arizona Department of Revenue and the Office of the Navajo Tax Commission, effective August 16, 2006, for that portion of the Navajo Nation that lies within the borders of the State of Arizona, Distributors shall submit all required documentation and pay to the Arizona Department of Revenue all amounts due for tax stamps and taxes corresponding to the sale of cigarettes and other tobacco products to retailers on the Navajo Nation.

**8.108. RELATIONSHIP BETWEEN TOBACCO PRODUCTS TAX AND SALES TAX**

Pursuant to 24 N.N.C. § 609, in calculating applicable gross receipts under the Sales Tax Act, a person may exclude those gross receipts on which Navajo Tobacco Products Tax has been paid.

#### **8.109. PASS-THROUGH OF TOBACCO PRODUCTS TAX**

The legal incidence of the Tobacco Products Tax is on Distributors and/or Retailers. The Distributors and/or Retailers are responsible for the remittance of the Tobacco Products Taxes due each period regardless of whether the taxes are collected from the consumer.

#### **8.110. 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.

#### **8.111. ENFORCEMENT AND INFORMATION SHARING**

- (A) In accordance with its enforcement authority under the Navajo Tax Code and the Uniform Tax Administration Statute, and consistent with the Navajo Nation's inherent sovereign prerogatives to regulate economic activity within the Navajo Nation, the Office of Navajo Tax Commission may take steps necessary to enforce the Navajo Tax Code and these regulations on the Reservation, including, but not limited to, inspection, monetary penalties, demanding surety, seizure of assets, suspension of the right to engage in productive activity within the Navajo Nation, and other enforcement actions.
- (B) In accordance with 24 N.N.C. §127 and 134(b)(4), the Office of the Navajo Tax Commission may share information with other jurisdictions as required or allowed by applicable law and agreements with other taxing jurisdictions.