



November 8, 2024

Honorable Crystalyne Curley, Speaker  
Office of the Speaker  
Navajo Nation Council  
P.O. Box 3390  
Window Rock, AZ 86515

*RE: CO-47-24, An Action Relating to the Health Education, and Human Services Law and Order, Budget and Finance, and Naabik'iyáti Committee, and the Navajo Nation Council; Amending the Tobacco Products Tax at 24 N.N.C. § 800 - § 810 and Enacting the Nicotine Products and Electronic Smoking Products Tax at 24 N.N.C. § 1001 - § 1016*

Dear Honorable Members of the 25<sup>th</sup> Navajo Nation Council:

Advocates have come to the Navajo Nation to request that we update our tax laws to ensure we are taxing electronic cigarettes and vaping products. The goal of this tax is to deter everyone, and especially our youth, from using electronic cigarettes and vaping products. The advocates have shared the names of several research papers that show that taxing these products will deter their use, especially by young men. I am happy to sign this legislation into law to take action that will improve the health of our people by signing this legislation into law. This legislation does several things in addition to creating a tax of electronic cigarettes and vaping products.

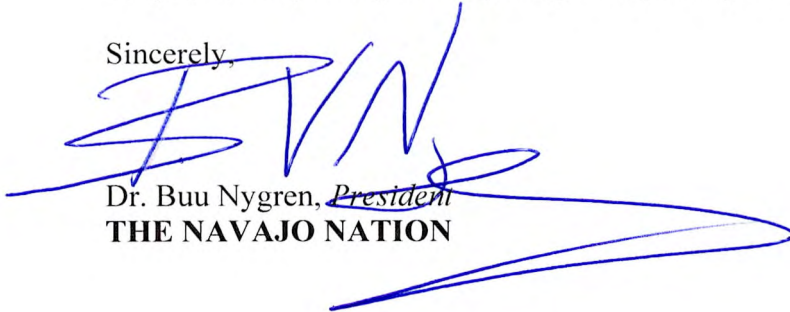
This legislation will amend the Navajo Nation's Tobacco Products Tax Act in several ways in addition to allowing the Nation to tax smokeless tobacco such as vaping products. The amendments will set aside funds to go directly to the Office of the Navajo Tax Commission to offset the costs of administration of taxing tobacco products. The amendments will increase the tax on all tobacco products including cigarettes, Cavendish, and cigars.

The amendments to the Tobacco Products Tax Act will also create a "special account," for use by the Navajo Department of Health. Taxes, interest, and penalties collected by the Office of the Navajo Tax Commission under the Tobacco Products Tax Act will be placed into this special account. These monies will no longer be placed into the General Fund. Twenty percent of the revenue placed into the account shall be used to support the work of traditional Navajo healer non-profit organizations that are Priority Certified under the Navajo Business Opportunity Act, while the other eighty percent shall be provided to the Office Traditional Cultural and Spiritual Healing.

Finally, this legislation will create the Nicotine Products and Electronic Smoking Products Tax section of the Nation's Tax Code. This new section is specially what will allow the Nation to tax electronic smoking products such as vaping products.

I appreciate the work of the advocates and the executive branch employees who helped the Council pull this legislation together. It is important we promote the health of our Navajo People, and especially of our young Navajo People so that they can live long and healthy lives.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Nygren", with a long horizontal flourish extending to the right.

Dr. Buu Nygren, *President*  
**THE NAVAJO NATION**

RESOLUTION OF THE  
NAVAJO NATION COUNCIL  
25<sup>th</sup> NAVAJO NATION COUNCIL - SECOND YEAR, 2024

AN ACT RELATING TO THE HEALTH, EDUCATION, AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING THE TOBACCO PRODUCTS TAX AT 24 N.N.C. § 800 - § 810 AND ENACTING THE NICOTINE PRODUCTS AND ELECTRONIC SMOKING PRODUCTS TAX AT 24 N.N.C. § 1001 - § 1016

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Health, Education, and Human Services Committee of the Navajo Nation Council is empowered to establish Navajo Nation policy, promulgate rules and regulations governing health, social services, education, human services, and general government services of the Navajo Nation and its tribal organizations, entities, and enterprises, among other duties and responsibilities. 2 N.N.C. § 401(B)(1).
- B. The Law and Order Committee of the Navajo Nation Council reviews and makes recommendations to the Navajo Nation Council on proposed amendments to the Navajo Nation Code. 2 N.N.C. § 601(B)(14).
- C. The Budget and Finance Committee of the Navajo Nation Council "coordinate[s] and review[s] all fiscal, financial and investment activities of the Navajo Nation and its enterprises, as well as other agencies, federal, state, regional and private, expending or seeking to expend funds within the Navajo Nation or for the benefit of the Navajo People." 2 N.N.C. § 301(B)(5).
- D. The Naabik'íyáti' Committee of the Navajo Nation Council reviews proposed resolutions requiring final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).
- E. The Navajo Nation Council, as the governing body of the Navajo Nation, sets policy for the Navajo Nation. 2 N.N.C. § 102(A).

SECTION TWO. FINDINGS

- A. Research shows that taxing commercial tobacco products is one of the most effective ways to reduce commercial tobacco use, especially among youth and young adults. See "The Economic Analysis of Substance Use and Abuse: An Integration of

Econometric and Behavioral Economic Research." Bickel, W.K., et al. (2009), University of Chicago Press 2009.

- B. According to the "Morbidity and Mortality Weekly Report" dated April 15, 2016, issued by the Centers for Disease Control and Prevention ("CDC"), electronic cigarettes or vaping products have been the most used commercial tobacco product among youth. From 2011 to 2015, 16% of U.S. high school students and 5.3% of middle school students reported the use of electronic cigarettes or vaping products within the past 30 days of the study.
- C. According to the 2017 Navajo Youth Risk Behavior Survey, 41% of high school students reported having smoked cigarettes in their lifetime. In addition, 40% of high school students reported having used electronic cigarettes or vaping products in their lifetime. Furthermore, 11% of Navajo high school students reported using smokeless tobacco products compared to the U.S. national high school use at 3.1% (reported by the CDC in December 18, 2020).
- D. The number of youths who have used electronic cigarettes or vaping products at least once will increase in their subsequent experience by a factor of three. These same youth are identified as not experiencing cigarette use. Youth identified as never having smoked a cigarette but using electronic cigarettes or vaping products may be more likely to smoke conventional cigarettes than "never smokers" who have not used electronic cigarettes or vaping products. Stone, E., et al. (2023). Recreational vaping ban in Australia - policy failure or masterstroke? The Lancet (British Edition); Leventhal, A.M., et al. (2015). Association of Electronic Cigarette Use with Initiation of Combustible Tobacco Product Smoking in Early Adolescence. The Journal of the American Medical Association, 314(7), 700-707.
- E. Further research shows that increasing the tax on smokeless tobacco may deter its use, particularly among young males, and increasing the tax on cigars may deter youth and adult cigar smoking. See Chaloupka, F.J. et al. (1997). Public Policy and Youth Smokeless Tobacco Use. Southern Economic Journal, 64(2), 503.
- F. According to the American Journal of Preventive Medicine, taxing electronic smoking devices as other commercial tobacco products will likely result in lower youth initiation and nicotine addiction. See Diaz, M.C., et al. (2023). Investigating the Impact of E-Cigarette Price and Tax on E-

Cigarette Use Behavior. American Journal of Preventive Medicine, 64(6), 797-804.

- G. The Navajo Nation Council finds it is in the best interests of the Navajo Nation to amend Title 24 of the Navajo Nation Code to increase the tax on tobacco products and electronic smoking products. These changes may result in a healthier population while reducing overall health costs and mortality rates.

**SECTION THREE. AMENDING THE TOBACCO PRODUCTS TAX AT 24 N.N.C. § 800 ET SEQ.**

The Navajo Nation Council hereby amends Title 24, Chapter 8 of the Navajo Nation Code. as follows:

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**TITLE 24. Taxation**  
**Chapter 8. Tobacco Products Tax**

**§ 800. Short title**

This Chapter shall be called the "Tobacco Products Tax Act."

**§ 801. Administration**

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this Chapter. The Office of the Navajo Tax Commission is charged with the administration of this Act. The Office of the Navajo Tax Commission shall retain five percent (5%) of all tax revenue collected under this Act as a fee to offset the costs of administration.

**§ 802. Definitions**

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this Chapter:

1. "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.
2. "Tobacco product" means any commercially processed and/or manufactured product for human consumption which contains tobacco, including cigarettes.

3. "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.
4. "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.
5. "Retailer" means any person engaged in the sale or resale of tobacco products within the Navajo Nation.
6. "Sale" means a transfer of possession or ownership between buyer and seller for a consideration.
7. "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.
8. "Period" means one calendar month.

#### § 803. Tax imposed - rates

There is hereby levied and imposed by Chapter for each period a tax upon the first sale by any retailer or distributor of tobacco products. The tax rates shall be established in regulations. Until other rates are established, the following rates shall apply:

1. On each cigarette, ~~five cents (5¢)~~ twelve and one-half cents (12.5¢);
2. On smoking tobacco, snuff, chewing tobacco, cut and granulated tobacco, shorts and refuse or fine cut tobacco, refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption, ~~eleven and three-tenths cents (11.3¢) per ounce or major fraction thereof~~ three dollars and eighty-five cents (\$3.85) per ounce or major fraction thereof;
3. On all Cavendish, plug or twist tobacco, ~~two and eight-tenths~~ one dollar and twenty-five cents (2.8¢) (\$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, at the minimum rate of two dollars and fifty cents (\$2.50) per

package. When more than one package subject to tax under this paragraph is packaged together, each package shall be taxed separately;

4. On each twenty small cigars or fractional part thereof weighing not more than three pounds per thousand, ~~twenty-two and three-tenths~~ two dollars and fifty cents (22.3¢ \$2.50);
5. On cigars of all descriptions except those included in paragraph 4 of this Subsection, made of tobacco or any substitute therefore, ~~if manufactured to retail at not more than five (5¢) cents each, eleven cents (11¢) on each three~~ dollars and sixty-two cents (\$3.62) on each cigar;, ~~but if manufactured to retail at more than five (5¢) cents each, four and four-tenths (4.4¢) cents on each cigar.~~
6. On any other tobacco product not subject to tax under the preceding paragraphs 1-5, 22% of the retail price.

#### **§ 804. Legal incidence**

The tax imposed by this ~~Chapter Act~~ is presumed to be a direct tax on retailers and distributors of commercially processed and/or manufactured tobacco products.

#### **§ 805. Liability for remittance and payment of tax**

Distributors and retailers are responsible for the collection and remittance of the tax imposed under this Chapter. Distributors and retailers are liable for taxes regardless of whether the taxes are collected from the consumer.

#### **§ 806. Licensing**

All distributors and retailers licensed by Arizona, Utah, or New Mexico shall provide the Office of the Navajo Tax Commission with a copy of their state license.

#### **§ 807. RESERVED**

#### **§ 808. Use of funds**

~~Tax, interest, and penalties collected by the Office of the Navajo Tax Commission pursuant to this Chapter shall be deposited in the General Fund of the Navajo Nation.~~

- A. After mandatory allocations of tax revenue as required by Navajo Nation law, all tax, interest, and penalties collected

by the Office of the Navajo Tax Commission pursuant to this Chapter shall be deposited into a special account for use by the Navajo Department of Health ("DOH") or its subordinate offices, in compliance with a Fund Management Plan that shall be approved by the Budget and Finance Committee. No funds so deposited shall be expended unless in compliance with the approved Fund Management Plan.

B. The Fund Management Plan shall include provisions stating as follows:

1. 20% of the net revenue received by DOH shall be used for projects or purposes carried out by traditional Navajo healer non-profit organizations.
2. 80% of the net revenue shall be provided to the Office of Traditional Cultural and Spiritual Healing ("OTCSH") for its use:
  - a. in leveraging funds or satisfying matching funds requirements to secure funds from non-Navajo Nation government sources; and/or
  - b. for projects or purposes carried out by the OTCSH to improve the well-being of the Navajo People by preserving traditional Navajo cultural teachings and practices.
3. OTCSH shall enter into contracts with individuals or entities to carry out or manage its projects.

**§ 809. Effective date**

The tax imposed by this Chapter shall be effective as of the date of adoption by the Navajo Nation Council and in accordance with 2 N.N.C. § 1005.

**§ 810. Severability**

If any provision of this Chapter, as amended, or its 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 this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

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**SECTION FOUR. ENACTING THE NICOTINE PRODUCTS AND ELECTRONIC SMOKING PRODUCTS ACT**

The Navajo Nation Council hereby amends Title 24, Chapter 10 of the Navajo Nation Code to enact the Nicotine Products and Electronic Smoking Products Tax as follows:

**TITLE 24. Taxation****Chapter 10. ~~Fuel Distributor's Licensing Act [Repealed]~~  
Nicotine Products and Electronic Smoking Products Tax****§ 1001. Short title**

The tax imposed by this Chapter shall be called the "Nicotine Products and Electronic Smoking Products Tax."

**§ 1002. Purpose**

The Navajo Nation Council hereby enacts this tax for the privilege of engaging in business activity within the Navajo Nation, and for purposes of defraying necessary governmental expenses incurred in providing for the public welfare.

**§ 1003. Tax imposed**

A tax is hereby imposed on the Gross Receipts of a Person. The tax due for a Period is determined by first calculating applicable gross receipts from all Nicotine Products and Electronic Smoking Products sold for a Period, and then multiplying those Gross Receipts from all Nicotine Products and Electronic Smoking Products sold by the applicable tax rate.

**§ 1004. Legal incidence and responsibility for payment**

The Person liable for the payment of the tax imposed by this Chapter is the Person receiving the Gross Receipts from a Sale of Nicotine Products and Electronic Smoking Products.

**§ 1005. Rate of tax**

The tax imposed by this Chapter is imposed at a rate of twenty-two percent (22%) of a Person's Nicotine Products Gross Receipts and Electronic Smoking Products Gross Receipts.

**§ 1006. Administration**

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this Chapter. The Office of the Navajo Tax Commission is charged with the administration of this tax. The Office of the Navajo Tax Commission shall retain five percent (5%) of all tax revenue collected under this Chapter as a fee to offset the costs of administration.

### **§ 1007. Definitions**

Subject to additional definitions contained in Title 24, Chapter 6, Sales Tax, the following definitions apply to this Chapter:

1. "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 aerolized 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. In addition, 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.
2. "Person" as defined in the Uniform Tax Administration Statute, shall include any organization, whether a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, company, corporation, or government (other than the Navajo Nation government), or any part, division, or agency of any of the foregoing, and an individual or group of individuals. In accordance with Section 1009 of this Chapter, "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.
3. "Nicotine Product" means any commercially processed or manufactured product for human consumption which 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 12 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."

#### **§ 1008. Navajo Nation government**

- A. Sales by corporations owned by the Navajo Nation government or any political subdivision thereof shall be fully subject to the tax imposed by this Chapter.
- B. Sales by the government of the Navajo Nation, or political subdivision or Enterprises thereof, shall be subject to the tax imposed by this Chapter.

#### **§ 1009. Exemptions and exclusions**

- A. The tax imposed by this Chapter does not apply to Gross Receipts generated directly by the following:
  - 1. Sales for resale;
  - 2. Sales related to agriculture, farming, or livestock activities conducted within the Navajo Nation
  - 3. Sales, other than Sales from an unrelated trade or business as defined in § 511 - § 513 of the Internal Revenue Code, by any person operating exclusively for non-profit or charitable purposes, and recognized as such pursuant to § 501(C)(3) and § 501(C)(19) of the United States Internal Revenue Code at the time of the sale.
  - 4. Sales by hospital and health-care organizations or facilities such as nursing care institutions, residential care and mental health facilities, senior citizen care facilities or retirement homes, kidney dialysis facilities and blood banks, or other facilities which provide medical care and services.

#### **§ 1010. Filing a return**

- A. Each Person must file a return indicating all sales from applicable gross receipts and the tax due under this Chapter for each Period by the fifteenth day of the second month after the end of each calendar quarter. Returns are due on February 15, May 15, August 15, and November 15 of each calendar year.
- B. The Commission may by form or regulation require that other information, records or relevant documents which it deems

necessary for the proper and efficient administration of this Chapter be included with the return and signed by a specified individual.

- C. No return need be filed by any Person who is exempt under Section 1009, provided that the Office of the Navajo Tax Commission may require such Person to file the information necessary to establish its exempt status.

#### **§ 1011. Payment of tax**

Payment in full of the taxes owed for a particular Period is due on the same date that the completed return for that same Period is due. The Office of the Navajo Tax Commission, however, may require payment of any taxes due on a monthly basis.

#### **§ 1012. Recordkeeping**

- A. Each Person shall keep all records which pertain to or relate in any manner to all sales from any business activity engaged in at any time by such Person. Such records shall be maintained separately for each reporting Period during which a Person is engaged in business activity.

- B. Records required to be kept must be preserved for four years beyond the end of the Period for which the records relate.

#### **§ 1013. Allocation of revenue**

After mandatory allocations of tax revenue as required by Navajo Nation law, all tax, interest, and penalties collected by the Office of the Navajo Tax Commission from this Act shall be deposited into the special account established in 24 N.N.C. § 808.

#### **§ 1014. No conflict with local governance act**

The provisions of this Chapter and corresponding regulations shall not be construed to affect any governmental authority under the Local Governance Act, 26 N.N.C. § 1 - § 2008.

#### **§ 1015. Severability.**

If any provision of this Chapter, as amended, or its 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 the Chapter which can be given effect without the invalid provision or application, and

to this end, the provisions of this Chapter are severable.

### **§ 1016. Repeals**

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

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### **SECTION FIVE. EFFECTIVE DATE**

This Act shall become effective as provided in 2 N.N.C. § 221(B), 2 N.N.C. § 1005(C)(10), and 2 N.N.C. § 164(A)(17).

### **SECTION SIX. SAVING CLAUSE**

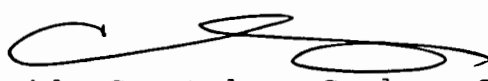
If any portion of this Act is determined invalid by the Navajo Nation Supreme Court, or by a District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, the remainder of this Act shall be the law of the Navajo Nation.

### **SECTION SEVEN. CODIFICATION**

The provisions of this Act which amend or enact new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel.

### **CERTIFICATION**

I, hereby, certify that the foregoing resolution was duly considered by the 25<sup>th</sup> Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 18 in Favor, and 00 Opposed, on this 23<sup>rd</sup> day of October 2024.

  
Honorable Crystalyne Curley, Speaker  
25<sup>th</sup> Navajo Nation Council

10/31/2024

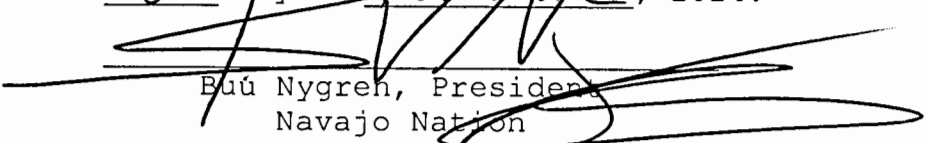
Date

Motion: Honorable George H. Tolth  
Second: Honorable Shaandiin Parrish

Speaker Crystalyne Curley not voting

## ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this 8 day of NOVEMBER, 2024.

  
Buu Nygren, President  
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 for the reason(s) expressed in the attached letter to the Speaker.

\_\_\_\_\_  
Buu Nygren, President  
Navajo Nation

# NAVAJO NATION

482

Navajo Nation Council Fall Session Day 3

10/23/2024  
09:54:32 PM

Amd# to Amd#	New Business: Item B. (CONSENT)
MOT Tolth, G	#0224-24; #0225-24; #0226-24
SEC Parrish, S	#0145-24; #0230-24

PASSED

Yeas : 18

Nays : 0

Excused : 3

Not Voting : 1

Yea : 18

Arviso, S	Jesus, B	Parrish, S	Tolth, G
Begay, H	Johnson, C	Simonson, G	Yanito, C
Begay, N	Nez, A	Simpson, D	Yazzie, C
Claw, S	Nez, R	Slater, C	Yazzie, L
Crotty, A	Notah, N		

Nay : 0

Excused : 3

Daniels, H	James, V	Charles-Newton, E
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Not Voting : 1

Tso, O

Presiding Speaker: Curley, C