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## LEGISLATIVE SUMMARY SHEET

Tracking No. 0278-20

**DATE:** November 4, 2020

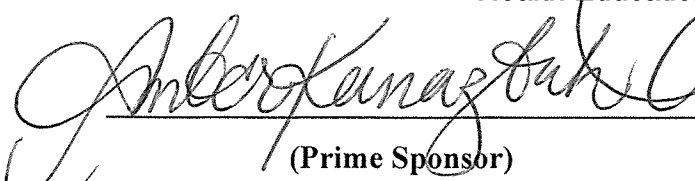



**TITLE OF RESOLUTION:** PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACT RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, HEALTH, EDUCATION AND HUMAN SERVICES, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING TITLE 24 CHAPTER 11, HEALTHY DINÉ NATION ACT OF 2014 AT 24 N.N.C. §§ 1001 - 1024

**PURPOSE:** The purpose of this legislation is to approve amendments to the Healthy Diné Nation Act of 2014, 24 N.N.C. §§ 1001 – 1024. The legislation would delete language regarding review by the Navajo Nation Council at the end of calendar year 2020 for extension by the Navajo Nation Council. The amendments purpose is also to clarify provisions for its effective administration and enforcement.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

**PROPOSED NAVAJO NATION COUNCIL RESOLUTION**  
**24<sup>th</sup> NAVAJO NATION COUNCIL -- Second Year, 2020**

**INTRODUCED BY**

  
(Prime Sponsor)  
  
Naabik'íyáti  
  
TRACKING NO. 0278-20  


AN ACT

RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT,  
BUDGET AND FINANCE, HEALTH, EDUCATION AND HUMAN SERVICES, AND  
NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL;  
AMENDING TITLE 24 CHAPTER 11, HEALTHY DINÉ NATION ACT OF 2014 AT  
24 N.N.C. §§ 1001 - 1024

BE IT ENACTED:

**SECTION ONE. AUTHORITY**

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council and is empowered with the authority to review and make recommendations to the Navajo Nation Council on amendments to and enactments in the Navajo Nation Code. 2 N.N.C. §§ 600(A) and 601(B)(14).
- B. The Resources and Development Committee is a standing committee of the Navajo Nation Council and is empowered to review and make recommendations to the Navajo Nation Council for taxation proposals affecting business or commercial activities, after consultation with the Navajo Tax Commission. 2 N.N.C. §§ 500(A) and 501(B) (4) (d).
- C. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council and is empowered to review and recommend resolutions relating to social services, health, environmental health, education, veterans and veterans services, employment and labor. 2 N.N.C. §§ 400(A) and 401(B) (6) (a).

1 D. The Naabik'iyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 164  
2 (A) (9), reviews proposed legislation which requires final action by the Navajo Nation  
3 Council.

4 E. The Navajo Nation Council must review and approve enactments or amendments of  
5 positive law. 2 N.N.C. § 164(A).

## 6 7 **SECTION TWO. FINDINGS**

8 A. The Navajo Nation Council passed Resolution CN-54-14, the Healthy Diné Nation Act  
9 of 2014, on November 17, 2014 and was signed by the Navajo Nation President on  
10 November 21, 2014. Resolution CN-54-14 is attached as **Exhibit 2**.

11 B. Resolution CN-54-14, the Healthy Diné Nation Act of 2014, was codified in the Navajo  
12 Nation Code at Title 24, Taxation, Sections 1001 through 1024.

13 C. The Healthy Diné Nation Act of 2014 at 24 N.N.C. § 1003 states: "This tax shall be  
14 reviewed at the end of the calendar year 2020 for extension by the Navajo Nation  
15 Council."

16 D. The Navajo Nation Tax Commission, through Resolution TAX-20-234, Recommends to  
17 the Navajo Nation Council the Approval of the Reauthorization and Amendment of the  
18 Healthy Diné Nation Act, 24 N.N.C. §§ 1001 *et seq.* Resolution TAX-20-234 states that  
19 "[t]he Act provides, "[t]his tax shall be reviewed at the end of the calendar year 2020 for  
20 extension by the Navajo Nation Council," 24 N.N.C. § 1003. ... "The Navajo Tax  
21 Commission further finds that certain provisions of the Act are unclear, such as the  
22 definition of "Minimal-to-no nutritional value food items" at § 1007(B), which has  
23 created challenges for the Office of the Navajo Tax Commission to effectively administer  
24 and enforce the Act; ... The Navajo Tax Commission now proposes amendments to the  
25 Act to extend the effective date of the Act and to clarify provisions for its effective  
26 administration and enforcement[.]" Navajo Nation Tax Commission Resolution TAX-  
27 20-234 is attached as **Exhibit 1**.

28 E. CN-54-14 Section 1 (A) Findings states that "[a]ccording to Navajo Area Indian Health  
29 Service, there are 25,000 Navajos with diabetes and another 75,000 are prediabetic. The  
30 *Sweet Success* data reports the following in 2011: 31% of Navajo pregnancies were

1 complicated (BMI's) in the overweight or obese range. Division of Diabetes Treatment  
2 and Prevention, Indian Health Service Headquarters (2012). Unpublished, Centers for  
3 Disease Control and Prevention and the Indian Health Service. Division of Diabetes  
4 Treatment and Prevention (2012), Annual diabetes clinical outcomes audit and Navajo  
5 Sweet Success annual audit (a tracking tool) (2012). Unpublished Navajo Area Indian  
6 Health Service, St. Michaels, Arizona.”

7 F. Further, CN-54-14 Section 1 (C) Findings states that “[a]ccording to the Navajo Area  
8 [Indian Health Service, IHS] GPRA Report 2009, of the obesity rate within the seven (7)  
9 Navajo Area IHS service units ranged from 23% to 60%, the overweight rate ranged  
10 from 17% to 39% for all age groups, and overall, “the highest percentage of patients  
11 identified as obese are those ages 25 to 54, the highest service unit is Tuba City with  
12 60% of those with calculated BMIs.” Navajo Area Indian Health Service (2009).  
13 Navajo Area GPRA report 2009: Government Performance Results Act, (GPRA)  
14 program assessment rating tool (PART) report (07/1/08 – 06/30/09). Unpublished, St.  
15 Michaels, Arizona.”

16 G. Further, CN-54-14 Section 1 (F) Findings states that “[a]ccording to the *American*  
17 *Journal of Clinical Nutrition*, “consumption of sugar-sweetened beverages (SSBs),  
18 particularly carbonated soft drinks, may be a key contributor of the epidemic of  
19 overweight and obesity, by virtue of these beverages’ high added sugar content, low  
20 satiety, and incomplete compensation for total energy.” There is a “positive association  
21 between greater intakes of SSBs and weight gain and obesity in both children and  
22 adults” and the “weight of epidemiologic and experimental evidence indicates that a  
23 greater consumption of SSBs is associated with weight gain and obesity.” There is  
24 “sufficient evidence [that] exists for public health strategies to discourage consumption  
25 of sugary drinks as part of a healthy lifestyle.” Malik, Vasanti S., Schulze, Mattias B.,  
26 and Hu, Frank B. (2006). Intake of sugar-sweetened beverages and weight gain: a  
27 systematic review. *American Journal of Clinical Nutrition*. Aug. 2006; 84(2): 274-228.  
28 <http://ajcn.nutrition.org/content/84/2/274.long> ”



1 H. The Navajo Nation Council finds that the Healthy Diné Nation Act of 2014 should be  
2 extended and amended to clarify provisions for its effective administration and  
3 enforcement.  
4

5 **SECTION THREE. AMENDING TITLE 24, CHAPTER 11, HEALTHY DINÉ**  
6 **NATION ACT OF 2014**

7 A. The Navajo Nation hereby amends the Title 24 as follows:  
8

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9 **NAVAJO NATION CODE ANNOTATED**

10 **TITLE 24. TAXATION**

11 **CHAPTER 11. HEALTHY DINÉ NATION ACT OF 2014**  
12  
13

14 **~~§1001~~ 1101. Short title**

15 The tax imposed by this Chapter shall be called the “Healthy Diné Nation Act of 2014”.  
16

17 **~~§1002~~ 1102. Purpose**

18 The Navajo Nation Council hereby enacts this tax for the privilege of engaging in retail  
19 business activity within the Navajo Nation, and for purposes of defraying necessary  
20 governmental expenses at the national and local level incurred in providing for the public  
21 welfare.  
22

23 **~~§1003~~ 1103. Tax Imposed**

24 A tax is hereby imposed on the gross receipts of a Person. The tax due for a period is  
25 determined by first calculating applicable gross receipts from all ~~minimal to no nutritional~~  
26 ~~value food items~~ “Unhealthy Foods and Beverages” sold for a period (the “Unhealthy  
27 Gross Receipts”), and then multiplying the Unhealthy Gross Receipts ~~those gross receipts~~  
28 ~~from all minimal to no nutritional value food items sold by~~ the applicable tax rate. ~~This tax~~  
29 ~~shall be reviewed at the end of the calendar year 2020 for extension by the Navajo Nation~~  
30 ~~Council.~~

1  
2 **§1004 1104. Legal Incidence and Responsibility for Payment**

3 The person liable for the payment of the tax imposed by this Chapter is the person  
4 receiving the ~~gross receipts~~ Consideration from the sale of ~~minimal-to-no nutritional value~~  
5 ~~food items~~ Unhealthy Foods and Beverages.

7 **§1005 1105. Rate of Tax**

8 The tax rate shall be two percent (2%) of a Person's Unhealthy Gross Receipts ~~all minimal-~~  
9 ~~to no nutritional value food item(s) sold~~  $(.02 \times \text{Unhealthy Gross Receipts})$  ~~all minimal-to-no~~  
10 ~~nutritional value food item(s) sold~~.

12 **§1006 1106. Administration**

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

18 **§1007 1107. Definitions**

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

21  
22 A. "Candy" means a preparation of sugar, honey, molasses, fructose, syrup, or other  
23 natural or artificial sweeteners and flavorings, including in combination with  
24 chocolate, fruits, nuts, popcorn, or other ingredients or flavorings in the form of bars,  
25 drops, or pieces. "Candy" includes but is not limited to the following sweetened  
26 confectionery snack items: rock candy, powdered candy (e.g. pixie sticks), gel  
27 candies, chewing gum (excluding nicotine gum); chocolates; candy bars; bonbons;  
28 gum drops; jellies and gummies; jelly beans; imperials; caramels; lollipops; stick  
29 candy; hard candy and lozenges (excluding cough drops and nicotine lozenges);  
30 taffies; candy wafers; fudges; Italian creams; nougats; nut brittle; chocolate or sugar

1 covered fruits and nuts; glazed or candied fruits and nuts; fruit roll-ups; sweetened  
2 popcorn; marshmallows; licorice; cereals and cereal products mixed with or covered  
3 with molasses, sugar or other sweetening agent; and all similar sweets however  
4 designated. "Candy" shall not include any preparation requiring refrigeration.  
5

6 B. "Chips" means any type of prepackaged snack food high in sodium and saturated  
7 fat, that is fried, baked, toasted, or dried. "Chips" are typically crispy, savory, and  
8 salty, and include but are not limited to: potato chips; tortilla chips; corn chips;  
9 vegetable or root chips; pita chips; cheese puffs or curls; pretzels; and all similar  
10 crispy snack foods however designated.  
11

12 AC. "Community Wellness Projects" means Navajo Nation Chapter community-  
13 based, community-owned wellness projects to address improvements to the physical  
14 and social environment of the community because of the need to prevent and/or  
15 reduce the incidence of obesity and Type 2 Diabetes Mellitus. Projects may include:  
16 farming and vegetable gardens; greenhouses; farmers' markets; healthy convenience  
17 stores; clean water; clean communities; wellness/exercise equipment and supplies;  
18 skate parks; health classes; parks; traditional, intergenerational, and contemporary  
19 wellness; traditional and non-traditional healthy food preparation classes; food  
20 processing and storage facilities; health food initiatives; community food  
21 cooperatives; playgrounds; basketball courts; walking, running, biking trails; picnic  
22 grounds, swimming pools; emergency preparedness; agricultural, recreational, health,  
23 youth clubs; library; Navajo traditional craft classes, equine therapy, health coaching;  
24 and any other community-based wellness projects to address improvements to  
25 physical and social environment of the community that are planned, implemented,  
26 directed, and reported by members of the Navajo Nation communities.  
27

28 D. "Consideration" means any money or other pecuniary benefit, goods, personal or  
29 real property, services, or any combination thereof, which accrues as a right, profit,  
30

1 advantage, or benefit to a person, or which reflects a payment, detriment, loss, or  
2 responsibility of a person.

3  
4 E. “Energy Drinks” means both carbonated and non-carbonated pre-packaged  
5 beverages containing stimulant drugs, including but not limited to stimulants such as  
6 caffeine, which are marketed to provide an extra boost in energy, promote  
7 wakefulness, maintain alertness, and provide cognitive and mood enhancement; and  
8 all similar articles however designated.

9  
10 F. B.—xi. “Frozen dDesserts” means any sweet food or beverage item made by  
11 freezing liquid or semisolids, based on naturally and/or artificially flavored water,  
12 fruit purees, dairy or diary substitutes, or custards; which may be combined with  
13 fruits, nuts, candy, sweets, or other ingredients. “Frozen Desserts” shall include, but  
14 not be limited to prepackaged and non-prepackaged: ice cream (and novelties  
15 containing ice cream such as ice cream sandwiches, popsicles, cones, cakes, and  
16 milkshakes); frozen custard; frozen yogurt; gelato; sherbet; sorbet; slushies; Italian  
17 ices; snow-cones; shakes; pudding popsicles; fruit popsicles containing less than  
18 100% Natural Fruit Juice; and all similar articles however designated. “Frozen  
19 Desserts” shall not include all natural fruit and/or vegetable smoothies provided they  
20 are comprised solely of fruits and/or vegetables, and may contain healthy additives  
21 such as: yogurt, milk; vitamins and minerals; or protein powder.

22  
23 G. “Unhealthy Gross Receipts” means the total amount of money, credit, or any other  
24 pecuniary benefit or advantage, plus the fair market value of any other Consideration,  
25 which is actually received during any period by any person from the sale of  
26 Unhealthy Food and Beverages, whether for profit or not, conducted wholly or  
27 partially within the Navajo Nation.

28  
29 H. “Navajo Nation” means all areas within the territorial jurisdiction of the Navajo  
30 Nation government as defined by 7 N.N.C. § 254.

1  
2 I. "Non-Prepackaged" means goods produced at the retail location or eating  
3 establishment.

4  
5 J. "Prepackaged" means commercially produced and packaged/wrapped/sealed food  
6 goods ready for retail sale and consumption.

7  
8 K. "Sweetened Baked Goods" means baked or fried food products that are high in  
9 saturated fat and/or sugar, may contain flour, eggs, dairy, shortening, oil, butter,  
10 baking powder, sugar or other sweeteners, natural or artificial flavorings, and which  
11 are prepackaged and non-prepackaged. These include but are not limited to: baked or  
12 fried dough; sweet breads; sweet rolls and buns; biscuits; bagels; croissants; cakes;  
13 pies; muffins; cookies; brownies; donuts; tarts; flans; tortes; bars; scones; danish;  
14 pastries; and all similar sweetened baked foods however designated; and mixes for  
15 the above items. This shall not include the following items if unsweetened: breads;  
16 rolls; buns; English muffins; bagels; biscuits; croissants; tortillas; and all similar  
17 unsweetened baked breads however designated.

18  
19 L B.i. "Sweetened Bbeverages" means a-beverage nonalcoholic drinks that are  
20 sweetened with sugar or other natural and artificial sweeteners, including calorie  
21 free/diet sweeteners, whether carbonated or noncarbonated, in any form, sold for  
22 human consumption. It shall include beverages in bottles or cans or served from a  
23 fountain dispenser or other source, such as: soda; sweetened flavored water; sports  
24 drinks; eEnergy dDrinks; fountain drinks; ieed pre-sweetened coffee; ieed and tea;  
25 flavored drinks; sweetened flavored milk drinks (such as chocolate milk); milkshakes,  
26 slushies, and other beverages made of Frozen Desserts; juice drinks containing sugar  
27 with less than 100 percent (100%) nNatural fFruit jJuice, naturaland/or vVegetable  
28 jJuice, fruit juice, or vegetable juice; a pPowder; or bBase pProduct as a liquid for  
29 sale. It shall not include: alcohol; baby formula; plain milk without sweeteners or  
30 flavoring; yogurt based drinks; soy milk; rice milk; almond milk; flavored and

1 unflavored water without sweetener; protein drinks and powders, and other  
2 formulated food intended as a meal replacement;

3  
4 M B. "Minimal to no nutritional value food Unhealthy Foods and Beverages"  
5 means Candy, Chips, Sweetened Baked Goods, Frozen Desserts, and Ssweetened  
6 Bbeverages, and such other foods and beverages as the Navajo Tax Commission may  
7 designate as unhealthy from time to time in the Tax Regulations and prepackaged and  
8 non-prepackaged snacks stripped of essential nutrients and high in salt, saturated fat,  
9 and sugar including sweetened beverages, sweets, chips, and crisps.

10  
11 ii. "Sweets" means any preparation that has a high content of sugar, sometimes  
12 in combination with flour, milk, butter, shortening, eggs, dried fruits, nuts,  
13 etc., such as candy, frozen desserts, pastries, pudding and gelatin based  
14 desserts or baked and fried goods.

15  
16 iii. "Snack chips and Crisps" (sodium and saturated fat) means crispy type snack  
17 foods that are often fried, baked, or toasted, such as potato chips, tortilla chips,  
18 pita chips, or cheese puffs that are high in sodium and fat.

19  
20 iv. "Sugar" includes sugar confections but not limited to sucrose, dextrose  
21 fructose, corn syrup, high fructose corn syrup, dextrin, galactose, glucose,  
22 honey, lactose, fructose, other processed caloric sweeteners, and those derived  
23 from fruit juice.

24  
25 v. "Corn syrup" means syrup made from cornstarch, consisting of dextrose,  
26 maltose and dextrins.

27  
28 N-B. vi. "Sweetener" includes natural sweeteners such as sugar, syrups, honey, and  
29 agave, as well as artificial sweeteners, which includes such as aspartame, saccharin,  
30 sucralose, stevia, cyclamate, xylitol, mogrosides, and many others.

1  
2  
3 Q B. vii. "Natural ~~f~~Fruit ~~j~~Juice or ~~f~~Fruit ~~j~~Juice" means the original liquid resulting  
4 from the pressing of fruit, the liquid resulting from the reconstitution of fruit juice  
5 concentrate of the liquid resulting from the restoration of fruit concentrate or the  
6 liquid resulting from the restoration of water to dehydrated fruit juice.

7  
8 P B. viii. "Natural ~~v~~Vegetable ~~j~~Juice or ~~v~~Vegetable ~~j~~Juice" means the original liquid  
9 resulting from the pressing of one or more vegetables. Liquid resulting from the  
10 reconstitution of vegetable juice concentrate or the liquid resulting from the  
11 restoration of water to dehydrated vegetable juice.

12  
13 Q B. ix. "Powder or ~~b~~Base ~~p~~Product" means a solid mixture of basic ingredients,  
14 including sugar, used in making, mixing or compounding soft drinks by mixing the  
15 powder of other base product with water, ice syrup, simple syrup, fruits, vegetables,  
16 fruit juice or any other product suitable to make a sweetened beverage.

17  
18 ~~x. "Candy" means snacks prepared of sugar, honey, salt, saturated fat, other~~  
19 ~~natural or artificial sweeteners in combination with chocolate; dried fruits;~~  
20 ~~fudge; marshmallows; nuts; mints; peanut brittle; white flour; other~~  
21 ~~ingredients or flavorings in many forms such as soft, hard, bars, drops, liquid,~~  
22 ~~spray, floss, carbonated, crystallized, tape, paper, thread, chewy, jelly, gum,~~  
23 ~~powder or pieces.~~

24  
25 ~~xii. "Pastries" consist of any mixed, baked, or fried products made primarily but~~  
26 ~~not exclusively from any form of flour, sugar, artificial sweeteners, dairy,~~  
27 ~~shortening, oil, butter, baking powder, nuts, fruits, eggs, jelly, and other filling~~  
28 ~~ingredients.~~

xiii. ~~"Pudding and gelatin-based desserts" means any soft, colorful or colorless, sweet preparation-based, which could include dairy, eggs, sugar, or other sweeteners, collagen, cornstarch, or any other flavorings.~~

xiv. ~~"Baked and fried goods" means baked or fried dough, batter, mixes, and decoration products such as cakes, cookies, and pastries that are high in saturated fat and/or sugar.~~

**§1008 1108. Navajo Nation Government**

A. Sales by enterprises and other business entities ~~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 subdivisions ~~or enterprises~~ thereof, shall be subject to the tax imposed by this Chapter.

**§1009. ~~Reserved~~**

**§1109. Exemptions and Exclusions**

A. The tax imposed by this Chapter does not apply to Unhealthy Gross Receipts generated directly by the following:

1. Sales for resale;

2. 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 sale;

3. Sales by facilities engaged in childcare, foster care or adoption placement, or battered families and homeless shelters;

4. Sales by itinerant salespersons;



5. Occasional sales by persons who are not regularly engaged in the business of selling personal or real property or services, which total less than five thousand (\$5,000) dollars per calendar year;
6. Sales by educational institutions, including primary and secondary schools, colleges, vocational, and job training programs;
7. Sales by hospitals and health-care organizations or facilities;
8. Sales from coin-operated vending machines of any type;
9. Sales paid for by coupons issued by the United States Department of Agriculture under the Food Stamp Act of 1977 (P.L. 95-113);
10. Sales paid for by vouchers issued under § 17 of the Child Nutrition Act (P.L. 95-627 and P.L. 99-669);

- B. Nothing in this Chapter shall be construed as imposing directly upon the United States a tax which is prohibited by federal law.

#### **§1110. Credits**

There shall be no credits. A person shall not be permitted to take a credit against the tax imposed by this Chapter for taxes paid pursuant to any nondiscriminatory excise tax imposed by any duly established township or local government sub-unit.

#### **§1011. —Reserved**

#### **§1012-1111. Filing of 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

1 administration of this Chapter be included with the return and signed by a specified  
2 person.

3  
4 C. No return need be filed by any person who is exempt under §609 §1109, provided  
5 that the Office of the Navajo Tax Commission may require such person to file the  
6 information necessary to establish its exempt status.

7  
8 ~~D. In the case of the exemption provided for in §609(A), the filing by a person of a~~  
9 ~~proper certificate of exemption with the Office of the Navajo Tax /Commission shall~~  
10 ~~constitute a claim for exemption.~~

11  
12 **~~§1013~~ 1112. Payment of Tax**

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

16  
17  
18 **~~§1014~~ 1113. Recordkeeping**

19 A. Each person shall keep all records which pertain to or relate in any manner to all  
20 sales from any business activity engaged in at any time by such person. Such records  
21 shall be maintained separately for each reporting period during which a person is  
22 engaged in business activity.

23  
24 B. Records required to be kept must be preserved for four years beyond the end of the  
25 period for which the records relate.

26  
27 **~~§1015~~ 1114. Reserved**

28 **~~§1016~~ 1115. Reserved**

29 **~~§1017.~~——Reserved**

30 **~~§1018.~~——Reserved**

1     ~~§1019.~~——Reserved

2  
3     ~~§1020~~ 1116. Allocation of Revenue

4         After allocation to permanent or special revenue funds as required by Navajo Nation  
5         law, and allocation to the Tax Administration Suspense Fund as required by the fiscal  
6         policy adopted by the Navajo Tax Commission for such Fund, the net revenue from this  
7         Chapter shall be disbursed as follows:

8             A.   One hundred percent (100%) of the Healthy Diné Nation Act of 2014 revenue  
9             collected from retail establishments located in the Navajo Nation shall be deposited  
10            into the Community Wellness Development Projects Fund to be appropriated  
11            pursuant to a fund management plan approved by the Budget and Finance Committee  
12            and administered by the Division of Community Development; and

13  
14            B.   The Division shall disburse the funds to the chapters as seed money for leverage  
15            to initiate, match, and/or improve community wellness projects.

16  
17  
18  
19     ~~§1021~~ 1117. No Conflict with Local Governance Act

20         The provisions of this Chapter and corresponding regulations shall not be construed  
21         inconsistently with the Local Governance Act, 26 N.N.C §§ 1-2008.

22  
23     ~~§1022~~ 1118. Severability

24         If any provision of this Chapter, as amended, or its application to any person or  
25         circumstance, is held invalid by a final judgment of a court of competent jurisdiction,  
26         the invalidity shall not affect other provisions or applications of the Chapter which can  
27         be given effect without the invalid provision or application, and to this end, the  
28         provisions of this Chapter are severable.

29  
30     ~~§1023.~~——Reserved

1  
2 **§1024 1119. Repeals**

3 All laws or parts of laws (or attachments thereto) which are inconsistent with the  
4 provisions of this Chapter are hereby repealed, including, without limitation, any law  
5 purporting to waive any right of taxation by the Navajo Nation.  
6

7 \*\*\*\*  
8

9 **SECTION FOUR. CODIFICATION**

10 The provisions of the Act which amend or adopt new sections of the Navajo Nation  
11 Code shall be codified by the Office of Legislative Counsel. The Office of Legislative  
12 Counsel shall incorporate such amended provisions in the next codification of the  
13 Navajo Nation Code.  
14

15 **SECTION FIVE. SAVINGS CLAUSE**

16 Should any provision of this Act be determined invalid by the Navajo Nation Supreme  
17 Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation  
18 Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.  
19

20 **SECTION SIX. EFFECTIVE DATE**

21 Amendments enacted herein shall be effective pursuant to 2 N.N.C. § 221(B).  
22  
23  
24  
25  
26  
27  
28  
29  
30

**RESOLUTION OF THE NAVAJO TAX COMMISSION**

**RECOMMENDING TO THE NAVAJO NATION COUNCIL  
THE APPROVAL OF THE REAUTHORIZATION AND AMENDMENT OF  
THE HEALTHY DINÉ NATION ACT, 24 N.N.C. §§ 1001 *ET SEQ.***

**WHEREAS:**

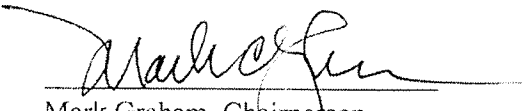
1. The Navajo Tax Commission is established as a part of the Executive Branch of the Navajo Nation government, and is empowered to review and study all sources of wealth and income within the Navajo Nation and the possible revenues from the taxation of those sources, in order to develop an appropriate, comprehensive system of taxation, 2 N.N.C. §§ 3351 and 3353(A)(1); and
2. The Navajo Nation Council enacted the Healthy Diné Nation Act of 2014 (the "Act"), pursuant to Resolution No. CN-54-14, codified at 24 N.N.C. § 1001 *et seq.*; and
3. The Act provides, "[t]his tax shall be reviewed at the end of the calendar year 2020 for extension by the Navajo Nation Council." 24 N.N.C. § 1003; and
4. The Navajo Tax Commission finds that 24 N.N.C. § 1003 means that the Act will expire at the end of calendar year 2020 and that Council should now review the Act for extension; and
5. The Navajo Tax Commission further finds that certain provisions of the Act are unclear, such as the definition of "Minimal-to-no nutritional value food items" at § 1007(B), which has created challenges for the Office of the Navajo Tax Commission to effectively administer and enforce the Act; and
6. The Navajo Tax Commission now proposes amendments to the Act to extend the effective date of the Act and to clarify provisions for its effective administration and enforcement, attached as Exhibit "A", and the Navajo Tax Commission recommends to the Navajo Nation Council the approval of the proposed amendments to the Act.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Navajo Tax Commission hereby proposes certain amendments to the Act, attached as Exhibit "A".
2. The Navajo Tax Commission hereby recommends that the Navajo Nation Council reauthorize the Act and approve the amendments attached as Exhibit "A".

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Tax Commission at a duly called meeting in St. Michaels, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 3 in favor and 0 opposed, with 0 abstaining, this 13<sup>th</sup> day of February, 2020.

  
Mark Graham, Chairperson  
Navajo Tax Commission

Motion: Loretta Largo

Second: Pearline Kirk

xc.    NTC Resolution File  
         ONTC Resolution File  
         Navajo Nation Department of Justice  
         Navajo Nation Office of Legislative Counsel  
         The 24<sup>th</sup> Navajo Nation Council

NAVAJO NATION CODE ANNOTATED

TITLE 24. TAXATION

CHAPTER 11. HEALTHY DINÉ NATION ACT OF 2014 UNHEALTHY FOOD AND  
BEVERAGE TAX

**§10011101. Short title**

The tax imposed by this Chapter shall be called the "~~Healthy Diné Nation Act of 2014~~Unhealthy Food and Beverage Tax".

**§10021102. Purpose**

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

**§10031103. 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 ~~minimal to no nutritional value food items~~ "Unhealthy Foods and Beverages" sold for a period ~~(the "Unhealthy Gross Receipts")~~, and then multiplying the Unhealthy Gross Receipts ~~those gross receipts from all minimal to no nutritional value food items sold by~~ the applicable tax rate. This tax shall be ~~reviewed at the end of the calendar year~~expire on December 31, 2020~~for extension unless it is extended~~ by the Navajo Nation Council.

**§10041104. 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~~Consideration from the sale of ~~minimal to no nutritional value food items~~ Unhealthy Foods and Beverages.

1 **§10051105.**    **Rate of Tax**

2 The tax rate shall be two percent (2%) of a Person's Unhealthy Gross Receipts ~~all minimal to~~  
3 ~~no nutritional value food item(s) sold~~ (.02 x Unhealthy Gross Receipts ~~all minimal to no~~  
4 ~~nutritional value food item(s) sold~~).

5  
6 **§10061106.**    **Administration**

7 All provisions of the Uniform Tax Administration Statute apply to this Chapter. The Navajo  
8 Nation Council charges the Office of the Navajo Tax Commission with the administration of  
9 this tax. The Office of Navajo Tax Commission shall retain five percent (5%) of all tax revenue  
10 collected under this Chapter as a fee to offset the costs of administration.

11 **§10071107.**    **Definitions**

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

14  
15        A.    "Candy" means a preparation of sugar, honey, molasses, fructose, syrup, or other  
16 natural or artificial sweeteners and flavorings, including in combination with chocolate,  
17 fruits, nuts, popcorn, or other ingredients or flavorings in the form of bars, drops, or  
18 pieces. "Candy" includes but is not limited to the following sweetened confectionery  
19 snack items: rock candy, powdered candy (e.g. pixie sticks), gel candies, chewing gum  
20 (excluding nicotine gum); chocolates: candy bars; bonbons; gum drops; jellies and  
21 gummies; jelly beans; imperials; caramels; lollipops; stick candy; hard candy and  
22 lozenges (excluding cough drops and nicotine lozenges); taffies; candy wafers; fudges;  
23 Italian creams; nougats; nut brittle; chocolate or sugar covered fruits and nuts; glazed or  
24 candied fruits and nuts; fruit roll-ups; sweetened popcorn; marshmallows; licorice;  
25 cereals and cereal products mixed with or covered with molasses, sugar or other  
26 sweetening agent; and all similar sweets however designated. "Candy" shall not include  
27 any preparation requiring refrigeration.

28  
29        B.    "Chips" means any type of prepackaged snack food high in sodium and saturated  
30 fat, that is fried, baked, toasted, or dried. "Chips" are typically crispy, savory, and salty.



1 and include but are not limited to: potato chips; tortilla chips; corn chips; vegetable or  
2 root chips; pita chips; cheese puffs or curls; pretzels; and all similar crispy snack foods  
3 however designated.

4  
5 A.C. "Community Wellness Projects" means Navajo Nation Chapter community-  
6 based, community-owned wellness projects to address improvements to the physical and  
7 social environment of the community because of the need to prevent and/or reduce  
8 the incidence of obesity and Type 2 Diabetes Mellitus and to improve the overall health  
9 of the Navajo People. Projects may include: farming and vegetable gardens;  
10 greenhouses; farmers' markets; healthy convenience stores; clean water; clean  
11 communities; wellness/exercise equipment and supplies; skate parks; health classes;  
12 parks; traditional, intergenerational, and contemporary wellness; traditional and non-  
13 traditional healthy food preparation classes; food processing and storage facilities; health  
14 food initiatives; community food cooperatives; playgrounds; basketball courts; walking,  
15 running, biking trails; picnic grounds, swimming pools; emergency preparedness;  
16 agricultural, recreational, health, youth clubs; library; Navajo traditional craft classes,  
17 equine therapy, health coaching; and any other community-based wellness projects to  
18 address improvements to physical and social environment of the community that are  
19 planned, implemented, directed, and reported by members of the Navajo Nation  
20 communities.

21 D. "Consideration" means any money or other pecuniary benefit, goods, personal or  
22 real property, services, or any combination thereof, which accrues as a right, profit,  
23 advantage, or benefit to a person, or which reflects a payment, detriment, loss, or  
24 responsibility of a person.

25  
26 E. "Energy Drinks" means both carbonated and non-carbonated pre-packaged  
27 beverages containing stimulant drugs, including but not limited to stimulants such as  
28 caffeine, which are marketed to provide an extra boost in energy, promote wakefulness,  
29 maintain alertness, and provide cognitive and mood enhancement; and all similar articles  
30 however designated.

1 F.xi. "Frozen Desserts" means any sweet food or beverage item made by freezing  
2 liquid or semisolids, based on naturally and/or artificially flavored water, fruit purees,  
3 dairy or diary substitutes, or custards, which may be combined with fruits, nuts, candy,  
4 sweets, or other ingredients. "Frozen Desserts" shall include, but not be limited to  
5 prepackaged and non-prepackaged: ice cream (and novelties containing ice cream such  
6 as ice cream sandwiches, popsicles, cones, cakes, and milkshakes); frozen custard;  
7 frozen yogurt; gelato; sherbet; sorbet; slushies; Italian ices; snow-cones; shakes; pudding  
8 popsicles; fruit popsicles containing less than 100% Natural Fruit Juice; and all similar  
9 articles however designated. "Frozen Desserts" shall not include all natural fruit and/or  
10 vegetable smoothies provided they are comprised solely of fruits and/or vegetables, and  
11 may contain healthy additives such as: yogurt, milk; vitamins and minerals; or protein  
12 powder.

13 G. "Unhealthy Gross Receipts" means the total amount of money, credit, or any  
14 other pecuniary benefit or advantage, plus the fair market value of any other  
15 Consideration, which is actually received during any period by any person from the sale  
16 of Unhealthy Food and Beverages, whether for profit or not, conducted wholly or  
17 partially within the Navajo Nation.

18  
19 H. "Navajo Nation" means all areas within the territorial jurisdiction of the Navajo  
20 Nation government as defined by 7 N.N.C. § 254.

21  
22 I. "Non-Prepackaged" means goods produced at the retail location or eating  
23 establishment.

24  
25 J. "Prepackaged" means commercially produced and packaged/wrapped/sealed  
26 food goods ready for retail sale and consumption.

27  
28 K. "Sweetened Baked Goods" means baked or fried food products that are high in  
29 saturated fat and/or sugar, may contain flour, eggs, dairy, shortening, oil, butter, baking  
30 powder, sugar or other sweeteners, natural or artificial flavorings, and which are

**TAX-20-234**  
**EXHIBIT "A"**

1 prepackaged and non-prepackaged. These include but are not limited to: baked or fried  
2 dough; sweet breads; sweet rolls and buns; biscuits; bagels; croissants; cakes; pies;  
3 muffins; cookies; brownies; donuts; tarts; flans; tortes; bars; scones; danish; pastries;  
4 and all similar sweetened baked foods however designated; and mixes for the above  
5 items. This shall not include the following items if unsweetened: breads; rolls; buns;  
6 English muffins; bagels; biscuits; croissants; tortillas; and all similar unsweetened baked  
7 breads however designated.

8  
9 iL. "Sweetened Bbeverages" means a beverage nonalcoholic drinks that are  
10 sweetened with sugar or other natural and artificial sweeteners, including calorie  
11 free/diet sweeteners, whether carbonated or noncarbonated, in any form, sold for human  
12 consumption. It shall include beverages in bottles or cans or served from a fountain  
13 dispenser or other source, such as: soda; sweetened flavored water; sports drinks;  
14 eEnergy dDrinks; fountain drinks; iced pre-sweetened coffee; iced and tea; flavored  
15 drinks; sweetened flavored milk drinks (such as chocolate milk); milkshakes, slushies,  
16 and other beverages made of Frozen Desserts; juice drinks containing sugar with less  
17 than 100 percent (100%) nNatural fFruit jJuice, natural and/or vVegetable jJuice, fruit  
18 juice, or vegetable juice; a pPowder, or bBase pProduct as a liquid for sale. It shall not  
19 include: alcohol; baby formula; plain milk without sweeteners or flavoring; yogurt based  
20 drinks; soy milk; rice milk; almond milk; flavored and unflavored water without  
21 sweetener; protein drinks and powders, and other formulated food intended as a meal  
22 replacement;

23 BM. "Minimal to no nutritional value food Unhealthy Foods and Beverages" means  
24 Candy, Chips, Sweetened Baked Goods, Frozen Desserts, and Ssweetened Bbeverages,  
25 and such other foods and beverages as the Navajo Tax Commission may designate as  
26 unhealthy from time to time in the Tax Regulations and prepackaged and non-  
27 prepackaged snacks stripped of essential nutrients and high in salt, saturated fat, and  
28 sugar including sweetened beverages, sweets, chips, and crisps.  
29  
30

TAX-20-234  
EXHIBIT "A"

1           ii. ~~“Sweets” means any preparation that has a high content of sugar,~~  
2           ~~sometimes in combination with flour, milk, butter, shortening, eggs, dried fruits,~~  
3           ~~nuts, etc., such as candy, frozen desserts, pastries, pudding and gelatin-based~~  
4           ~~desserts or baked and fried goods.~~

5  
6           iii. ~~“Snack chips and Crisps” (sodium and saturated fat) means crispy type~~  
7           ~~snack foods that are often fried, baked, or toasted, such as potato chips, tortilla~~  
8           ~~chips, pita chips, or cheese puffs that are high in sodium and fat.~~

9  
10          iv. ~~“Sugar” includes sugar confections but not limited to suerose, dextrose~~  
11          ~~fructose, corn syrup, high fructose corn syrup, dextrin, galactose, glucose, honey,~~  
12          ~~lactose, fructose, other processed calorie sweeteners, and those derived from fruit~~  
13          ~~juice.~~

14  
15          v. ~~“Corn syrup” means syrup made from cornstarch, consisting of dextrose,~~  
16          ~~maltose and dextrans.~~

17  
18          vi. ~~—~~

19          N. “Sweetener” includes natural sweeteners such as sugar, syrups, honey, and  
20          agave, as well as artificial sweeteners, ~~which includes~~ such as aspartame, saccharin,  
21          sucralose, stevia, cyclamate, xylitol, mogrosides, and many others.

22  
23          vii. ~~—~~

24          O. “Natural Fruit Juice or Fruit Juice” means the original liquid resulting from  
25          the pressing of fruit, the liquid resulting from the reconstitution of fruit juice concentrate  
26          of the liquid resulting from the restoration of fruit concentrate or the liquid resulting  
27          from the restoration of water to dehydrated fruit juice.

28  
29          viii. ~~—~~

30          P. “Natural Vegetable Juice or Vegetable Juice” means the original liquid  
                resulting from the pressing of one or more vegetables. Liquid resulting from the

1 reconstitution of vegetable juice concentrate or the liquid resulting from the restoration  
2 of water to dehydrated vegetable juice.

3  
4 ix. —

5 Q. "Powder or ~~b~~Base ~~p~~Product" means a solid mixture of basic ingredients,  
6 including sugar, used in making, mixing or compounding soft drinks by mixing the  
7 powder of other base product with water, ice syrup, simple syrup, fruits, vegetables, fruit  
8 juice or any other product suitable to make a sweetened beverage.

9  
10 ~~"Candy" means snacks prepared of sugar, honey, salt, saturated fat, other natural~~  
11 ~~or artificial sweeteners in combination with chocolate; dried fruits; fudge;~~  
12 ~~marshmallows; nuts; mints; peanut brittle; white flour; other ingredients or~~  
13 ~~flavorings in many forms such as soft, hard, bars, drops, liquid, spray, floss,~~  
14 ~~carbonated, crystallized, tape, paper, thread, chewy, jelly, gum, powder or pieces.~~

15 ~~"Pastries" consist of any mixed, baked, or fried products made primarily but not~~  
16 ~~exclusively from any form of flour, sugar, artificial sweeteners, dairy, shortening,~~  
17 ~~oil, butter, baking powder, nuts, fruits, eggs, jelly, and other filling ingredients.~~

18  
19 xiii. ~~"Pudding and gelatin based desserts" means any soft, colorful or~~  
20 ~~colorless, sweet preparation based, which could include dairy, eggs, sugar, or~~  
21 ~~other sweeteners, collagen, cornstarch, or any other flavorings.~~

22  
23 ~~"Baked and fried goods" means baked or fried dough, batter, mixes, and~~  
24 ~~decoration products such as cakes, cookies, and pastries that are high in saturated~~  
25 ~~fat and/or sugar.~~

26  
27 ~~§1008~~1108. **Navajo Nation Government**

28 A. Sales by enterprises and other business entities~~corporations~~ owned by the Navajo  
29 Nation government or any political subdivision thereof shall be fully subject to the tax  
30 imposed by this Chapter.

B. Sales by the government of the Navajo Nation; or political subdivisions or enterprises thereof, shall be subject to the tax imposed by this Chapter.

~~§1009.~~ **Reserved**

**§1109. Exemptions and Exclusions**

A. The tax imposed by this Chapter does not apply to Unhealthy Gross Receipts generated directly by the following:

1. Sales for resale;
2. 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 sale;
3. Sales by facilities engaged in childcare, foster care or adoption placement, or battered families and homeless shelters;
4. Sales by itinerant salespersons;
5. Occasional sales by persons who are not regularly engaged in the business of selling personal or real property or services, which total less than five thousand (\$5,000) dollars per calendar year;
6. Sales by educational institutions, including primary and secondary schools, colleges, vocational, and job training programs;
7. Sales by hospitals and health-care organizations or facilities;
8. Sales from coin-operated vending machines of any type;
9. Sales paid for by coupons issued by the United States Department of Agriculture under the Food Stamp Act of 1977 (P.L. 95-113);
10. Sales paid for by vouchers issued under § 17 of the Child Nutrition Act (P.L. 95-627 and P.L. 99-669);

B. Nothing in this Chapter shall be construed as imposing directly upon the United States a tax which is prohibited by federal law.

1 **§1110. Credits**

2 There shall be no credits. A person shall not be permitted to take a credit against the tax  
3 imposed by this Chapter for taxes paid pursuant to any nondiscriminatory excise tax imposed by  
4 any duly established township or local government sub-unit.

5  
6 ~~§1011.~~ **Reserved**

7  
8 ~~§1012~~**§1111. Filing of Return**

9 A. Each person must file a return indicating all sales from applicable gross receipts  
10 and the tax due under this Chapter for each period by the fifteenth day of the second  
11 month after the end of each calendar quarter. Returns are due on February 15, May 15,  
12 August 15, and November 15 of each calendar year.

13 B. The Commission may by form or regulation require that other information,  
14 records or relevant documents which it deems necessary for the proper and efficient  
15 administration of this Chapter be included with the return and signed by a specified  
16 person.

17  
18 C. No return need be filed by any person who is exempt under ~~§609~~ §1109,  
19 provided that the Office of the Navajo Tax Commission may require such person to file  
20 the information necessary to establish its exempt status.

21  
22 ~~D. In the case of the exemption provided for in §609(A), the filing by a person of a~~  
23 ~~proper certificate of exemption with the Office of the Navajo Tax Commission shall~~  
24 ~~constitute a claim for exemption.~~

25  
26 ~~§1013~~**§1112. Payment of Tax**

27 Payment in full of the taxes owed for a particular period is due on the same date that the  
28 completed return for that same period is due. The Office of the Navajo Tax Commission,  
29 however, may require payment of any taxes due on a monthly basis.  
30

1  
2 **~~§1014~~ 1113. Recordkeeping**

3 A. Each person shall keep all records which pertain to or relate in any manner to all  
4 sales from any business activity engaged in at any time by such person. Such records  
5 shall be maintained separately for each reporting period during which a person is  
6 engaged in business activity.

7  
8 B. Records required to be kept must be preserved for four years beyond the end of the  
9 period for which the records relate.

10 **~~§1015~~ 1114. Reserved**

11 **~~§1016~~ 1115. Reserved**

12 **~~§1017.~~ Reserved**

13 **~~§1018.~~ Reserved**

14 **~~§1019.~~ Reserved**

15  
16 **~~§1020~~ 1116. Allocation of Revenue**

17 After allocation to permanent or special revenue funds as required by Navajo Nation law, and  
18 allocation to the Tax Administration Suspense Fund as required by the fiscal policy adopted by  
19 the Navajo Tax Commission for such Fund, the net revenue from this Chapter shall be disbursed  
20 as follows:

21 A. One hundred percent (100%) of the ~~Healthy Diné Nation Act of 2014~~ Unhealthy  
22 Food and Beverage Tax revenue collected from retail establishments located in the  
23 Navajo Nation shall be deposited into the Community Wellness Development Projects  
24 Fund to be appropriated pursuant to a fund management plan approved by the Budget  
25 and Finance Committee and administered by the Division of Community Development;  
26 and

27  
28 B. The Division shall disburse the funds to the chapters as seed money for leverage to  
29 initiate, match, and/or improve community wellness projects.  
30



1  
2  
3 **§1021117. No Conflict with Local Governance Act**

4 The provisions of this Chapter and corresponding regulations shall not be construed  
5 inconsistently with the Local Governance Act, 26 N.N.C §§ 1-2008.

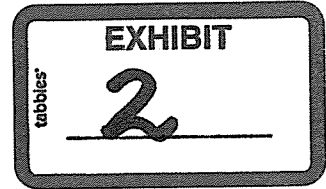
6  
7 **§10221118. Severability**

8 If any provision of this Chapter, as amended, or its application to any person or circumstance, is  
9 held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not  
10 affect other provisions or applications of the Chapter which can be given effect without the  
11 invalid provision or application, and to this end, the provisions of this Chapter are severable.

12 **§1023. Reserved**

13  
14 **§10241119. Repeals**

15 All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of  
16 this Chapter are hereby repealed, including, without limitation, any law purporting to waive any  
17 right of taxation by the Navajo Nation.  
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RESOLUTION OF THE  
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL—FOURTH YEAR, 2014

AN ACT

RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'IYATI' AND NAVAJO NATION COUNCIL; AMENDING TITLE 24 OF THE NAVAJO NATION CODE BY ENACTING THE HEALTHY DINÉ NATION ACT OF 2014

BE IT ENACTED:

Section 1. Findings

The Navajo Nation finds the following with respect to this resolution.

- A. According to Navajo Area Indian Health Service, there are 25,000 Navajos with diabetes and another 75,000 are pre-diabetic. The Sweet Success data reports the following in 2011: 31% of Navajo pregnancies were complicated (BMI's) in the overweight or obese range. Division of Diabetes Treatment and Prevention, Indian Health Service Headquarters (2012). Unpublished, Centers for Disease Control and Prevention and the Indian Health Service. Division of Diabetes Treatment and Prevention (2012), Annual diabetes clinical outcomes audit and Navajo sweet success annual audit (a tracking tool) (2012). Unpublished, Navajo Area Indian Health Service, St. Michaels, Arizona.
- B. At an average, it costs over \$13,000 per person annually to treat diabetes. The cost for treating diabetes related complications can exceed \$100,000 per person. O'Connell JM, Wilson C, Manson SM, & Acton KJ (2012). The costs of treating American Indian adults with diabetes within the Indian Health Service, research and practice. *American Indian Journal of Public Health*.

- C. According to the Navajo Area [Indian Health Service, IHS] *GPRA Report 2009*, of the obesity rate within the seven (7) Navajo Area IHS service units ranged from 23% to 60%, the overweight rate ranged from 17% to 39% for all age groups, and overall, "the highest percentage of patients identified as obese are those ages 25 to 54, the highest service unit is Tuba City with 60 % of those with calculated BMIs." Navajo Area Indian Health Service (2009). Navajo area GPRA report 2009: government performance results act, (GPRA) program assessment rating tool (PART) report (07/1/08-06/30/09). Unpublished, St. Michaels, Arizona.
- D. According to the *Center of Disease Control and Prevention*, "each year, more than 13,000 young people are diagnosed with type 1 diabetes" and "health care providers are finding more and more children with type 2 diabetes, a disease usually diagnosed in adults aged 40 years or older." For only American Indians, there is a "statistically significant increase in the prevalence of type 2 diabetes among children and adolescents." Center of Disease Control and Prevention (2013). Children and diabetes. <http://www.cdc.gov/diabetes/projects/cda2.htm>
- E. According to the *Mayo Clinic*, primary risk factors of Type 2 Diabetes in children are overweight, obesity, inactivity, race, and family history. Symptoms can include increased thirst, increased urination, increased hunger, weight loss, fatigue, blurred vision, slow-healing sores or frequent infections, areas of and darkened skin. Complications can include heart and blood vessel disease, increased risk cardiovascular problems, including heart disease, stroke, high cholesterol and high blood pressure, nerve damage (neuropathy), kidney damage (nephropathy), eye damage, foot damage, and skin conditions. Mayo Clinic (2014). Type 2 diabetes in children. <http://www.mayoclinic.org/diseases-conditions/type-2-diabetes-in-children/basics/definition/con-20030124>
- F. According to the *American Journal of Clinical Nutrition*, "consumption of sugar-sweetened beverages (SSBs), particularly carbonated soft drinks, may be a key contributor to the epidemic of overweight and obesity, by

virtue of these beverages' high added sugar content, low satiety, and incomplete compensation for total energy." There is a "positive association between greater intakes of SSBs and weight gain and obesity in both children and adults" and the "weight of epidemiologic and experimental evidence indicates that a greater consumption of SSBs is associated with weight gain and obesity." There is "sufficient evidence [that] exists for public health strategies to discourage consumption of sugary drinks as part of a healthy lifestyle." Malik, Vasanti S., Schulze, Matthias B., and Hu, Frank B. (2006). Intake of sugar-sweetened beverages and weight gain: a systematic review. *American Journal of Clinical Nutrition*. Aug 2006; 84(2): 274-288. <http://ajcn.nutrition.org/content/84/2/274.long>

- G. According to the Navajo Nation Human Rights Commission, "the right to food is a human right recognized under international law that protects the right of all human beings to feed themselves in dignity, either by producing their food or by purchasing it." Resolution NNHRCFeb-02-09.
- H. According to the *New York Times Magazine* cover story "The Extraordinary Science of Addictive Junk Food" states that people are "addicted to junk food" and "this addiction will only deepen as the food industry continues to find new ways to get people hooked on foods that are convenient and inexpensive." Kalaidis, Jen. (2013). Should the U.S. adopt a fat tax? *The Week*.
- I. According to the *British Medical Journal*, economists agree that "government intervention, including taxation, is justified when the market fails to provide the optimum amount of a good for society's well-being." Kalaidis, Jen. (2013). Should the U.S. adopt a fat tax? *The Week*.
- J. According to the *Diné Food Sovereignty* report, 74% of respondents "think health problems in [their] communities are caused by a lack of healthy and nutritious food." Diné Policy Institute (2014). Diné food sovereignty: a report on the Navajo Nation food system and the case to rebuild a self-sufficient food system for the Diné people. [Http://www.dinecollege.edu/institutes/DPI/Docs/dpi-food-sovereignty-report.pdf](http://www.dinecollege.edu/institutes/DPI/Docs/dpi-food-sovereignty-report.pdf)

- K. According to the *Diné Food Sovereignty* report, "the United States Department of Agriculture identifies nearly all of the Navajo Nation's 27,000 square miles as a food desert," which is defined as "an area, either urban or rural, without access to affordable fresh and healthy foods" and where "heavily processed foods are often readily available." Diné Policy Institute (2014). Diné food sovereignty: a report on the Navajo Nation food system and the case to rebuild a self-sufficient food system for the Diné people.  
<http://www.dinecollege.edu/institutes/DPI/Docs/dpi-food-sovereignty-report.pdf>
- L. According to the *Tsehootsooi Medical Center Community Health Needs Assessment*, 86.74% of respondents recommended facilities needed in their community: walking trails, 42.54%; recreational, 60.87%; playground, 46.87%; and other, 8.47%. Health programs were recommended by 88.77% of the respondents with the following: CPR classes, 33.89%; cultural classes/resources, 34.35%; fitness instruction, 52.95%; health education/programs, 50.09%; nutrition classes, 52.12%; parenting groups, 37.66%; and other, 8.66%. Clichee, Dominic, M. (2013). Tsehootsooi Medical Center community health needs assessment.  
<http://www.fdihb.org/files/downloads/TMC%20CHAH%20v3.2%20without%20implementation%20plans.pdf>
- M. According to the *Chinle Health Council Community Health Assessment*, community respondents identified diabetes, obesity, and unhealthy foods as the top three important health issues in their communities, with diabetes as the number one health issue in the Chinle communities. Respondents identified "Wellness/Health education (Nutrition), Community events, Wellness Center" as the "most important factors for a healthy community." Respondents rated the health of their community with the following "Nutrition/bad food, Exercise, Unidentified illness/sickness/disease." Lynch, Patrick D. & Clichee, Dominic M. (2012). Chinle Health Council community health assessment. Unpublished, Chinle Health Council.

- N. The revenue generated from the Healthy Diné Nation Act of 2014 will be earmarked for chapters to plan for community originated wellness projects such as farming and vegetable gardens; greenhouses; farmers' markets; healthy convenience stores; clean water; clean communities; wellness/exercise equipment and supplies; skate parks; health classes; parks; traditional, intergenerational, and contemporary wellness; traditional and non-traditional healthy food preparation classes; food processing and storage facilities; health food initiatives; community food cooperatives; playgrounds; basketball courts; walking, running, biking trails; picnic grounds, swimming pools; emergency preparedness; agricultural, recreational, health, youth clubs; library; Navajo traditional craft classes, equine therapy, health coaching; and any other community-based wellness projects to address improvements to physical and social environment of the community that are planned, implemented, directed, and reported by members of the Navajo Nation communities.
- O. The Healthy Diné Nation Act of 2014 is to take responsibility of our health crisis, to raise awareness of unhealthy foods, to empower everyone to lead productive and healthy lives. This Act will impact physical and social environment where communities are empowered to take positive action; improve local capacity for wellness and improved health; make healthy food available and easily accessible; provide communities with clean water and recycling centers; reduce rates of chronic diseases such as obesity, diabetes, heart diseases, cancer, etc.; preserve Diné tradition, culture, and language; preserve Diné traditional food; maintain a healthy weight; improve academic achievement of healthy children and youth; generate active and healthy communities; foster well-informed, educated communities about health and wellness to make positive, healthy choices, healthy individuals and families; build a healthy, thriving, and productive workforce; promote healthy businesses; reduce health care costs; to save lives and money; and to allow the people to take ownership of healthy initiatives; to protect and preserve our population for future healthy generations.
- P. It is the intent of the Navajo Nation Council, by approving the Healthy Diné Nation Act of 2014 to diminish the human and economic costs of obesity and diabetes on the Navajo

Nation. The intent is to improve health by creating the environment that supports health and wellness with a dedicated revenue source for Community Wellness Projects designed by Navajo Nation Chapters to prevent obesity, Type 2 Diabetes Mellitus, and other such health conditions by discouraging excessive consumption of sweetened beverages and minimal to no nutritional value food items high in sugar, salt, and saturated fat.

- Q. There is public support for the proposed tax on sweetened beverages and minimal-to-no nutritional value food items among communities across the Navajo Nation. Navajo Nation Chapter Resolutions and resolutions from other entities in support of a tax on minimal-to-no nutritional value food items are attached hereto as Exhibit A.
- R. The Navajo Nation finds it is in the best interest of the Navajo Nation to amend Title 24 of the Navajo Nation Code and to enact the Healthy Diné Nation Act of 2014.

## **Section 2. Amendments to Title 24 of the Navajo Nation Code**

The Navajo Nation hereby amends Title 24 of the Navajo Nation Code, 24 N.N.C. §§ 1001-1024, as follows:

### **NAVAJO NATION CODE ANNOTATED TITLE 24. TAXATION CHAPTER 11. HEALTHY DINÉ NATION ACT OF 2014**

#### **§1001. Short title**

The tax imposed by this Chapter shall be called the "Healthy Diné Nation Act of 2014".

#### **§1002. Purpose**

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

**§1003. Tax Imposed**

A tax is hereby imposed on the gross receipts of a retail business person. The tax due for a period is determined by first calculating applicable gross receipts from all minimal-to-no nutritional value food items sold for a period, and then multiplying those gross receipts from all minimal-to-no nutritional value food items sold by the applicable tax rate. This tax shall be reviewed at the end of the calendar year 2034 2020 unless extended for extension by the Navajo Nation Council

**§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 the sale of minimal-to-no nutritional value food item(s).

**§1005. Rate of Tax**

The rate shall be two percent (2%) of all minimal-to-no nutritional value food item(s) sold (.02 x all minimal-to-no nutritional value food item(s) sold).

**§1006. Administration**

All provisions of the Uniform Tax Administration Statute apply to this Chapter.

**§1007. Definitions**

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

A. "Community Wellness Projects" means Navajo Nation Chapter community-based, community-owned wellness projects to address improvements to the physical and social environment of the community because of the need to prevent and/or reduce the incidence of obesity and Type 2 Diabetes Mellitus. Projects may include: farming and vegetable gardens; greenhouses; farmers' markets; healthy convenience stores; clean water; clean communities; wellness/exercise equipment and supplies; skate parks; health classes; parks;



traditional, intergenerational, and contemporary wellness; traditional and non-traditional healthy food preparation classes; food processing and storage facilities; health food initiatives; community food cooperatives; playgrounds; basketball courts; walking, running, biking trails; picnic grounds, swimming pools; emergency preparedness; agricultural, recreational, health, youth clubs; library; Navajo traditional craft classes, equine therapy, health coaching; and any other community-based wellness projects to address improvements to physical and social environment of the community that are planned, implemented, directed, and reported by members of the Navajo Nation communities.

B. "Minimal-to-no nutritional value food" means sweetened beverages and prepackaged and non-prepackaged snacks stripped of essential nutrients and high in salt, saturated fat, and sugar including sweetened beverages, sweets, chips, and crisps.

i. "Sweetened beverages" means a beverage, whether carbonated or noncarbonated in any form sold for human consumption. It shall include: soda; flavored water; sports drinks; energy drinks; fountain drinks; iced coffee; iced tea; flavored drinks; drinks containing sugar with natural fruit juice, natural vegetable juice, fruit juice, or vegetable juice; a powder, or base product as a liquid for sale.

ii. "Sweets" means any preparation that has a high content of sugar, sometimes in combination with flour, milk, butter, shortening, eggs, dried fruits, nuts, etc., such as candy, frozen desserts, pastries, pudding and gelatin based desserts or baked and fried goods.

iii. "Snack chips and Crisps" (sodium and saturated fat) means crispy type snack foods that are often fried, baked, or toasted, such as potato chips, tortilla chips, pita chips, or cheese puffs that are high in sodium and fat.

iii. "Snack chips and Crisps" (sodium and saturated fat) means crispy type snack foods that are often fried, baked, or toasted, such as potato chips,

tortilla chips, pita chips, or cheese puffs that are high in sodium and fat.

iii. "Snack chips and Crisps" (sodium and saturated fat) means crispy type snack foods that are often fried, baked, or toasted, such as potato chips, tortilla chips, pita chips, or cheese puffs that are high in sodium and fat.

iv. "Sugar" includes sugar confections but not limited to sucrose, dextrose fructose, corn syrup, high-fructose corn syrup, dextrin, galactose, glucose, honey, lactose, fructose, other processed caloric sweeteners, and those derived from fruit juice.

v. "Corn syrup" means syrup made from cornstarch, consisting of dextrose, maltose and dextrins.

vi. "Sweetener" includes artificial sweetener, which includes aspartame, saccharin, sucralose, stevia, cyclamate, xylitol, mogrosides, and many others.

vii. "Natural fruit juice or fruit juice" means the original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of fruit juice concentrate of the liquid resulting from the restoration of fruit concentrate or the liquid resulting from the restoration of water to dehydrated fruit juice.

viii. "Natural vegetable juice or vegetable juice" means the original liquid resulting from the pressing of one or more vegetables. Liquid resulting from the reconstitution of vegetable juice concentrate or the liquid resulting from the restoration of water to dehydrated vegetable juice.

ix. "Powder or base product" means a solid mixture of basic ingredients, including sugar, used in making, mixing or compounding soft drinks by mixing the powder of other base product with water, ice

syrup, simple syrup, fruits, vegetables, fruit juice or any other product suitable to make a sweetened beverage.

x. "Candy" means snacks prepared of sugar, honey, salt, saturated fat, other natural or artificial sweeteners in combination with chocolate; dried fruits; fudge; marshmallows; nuts; mints; peanut brittle; white flour; other ingredients or flavorings in many forms such as soft, hard, bars, drops, liquid, spray, floss, carbonated, crystallized, tape, paper, thread, chewy, jelly, gum, powder or pieces.

xi. "Frozen desserts" means any sweet item made by freezing liquid or semisolids, based on naturally and/or artificially flavored water, fruit purees, dairy or dairy substitutes, custards; combined with fruits, nuts, candy, sweets, or other ingredients.

xii. "Pastries" consist of any mixed, baked, or fried products made primarily but not exclusively from any form of flour, sugar, artificial sweeteners, dairy, shortening, oil, butter, baking powder, nuts, fruits, eggs, jelly, and other filling ingredients.

xiii. "Pudding and gelatin based desserts" means any soft, colorful or colorless, sweet preparation based, which could include dairy, eggs, sugar, or other sweeteners, collagen, cornstarch, or any other flavorings.

xiv. "Baked and fried goods" means baked or fried dough, batter, mixes, and decoration products such as cakes, cookies, and pastries that are high in saturated fat and/or sugar.

#### §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 subdivisions or enterprises thereof, shall be subject to the tax imposed by this Chapter.

§1009. Reserved

§1011. Reserved

§1012. Filing of 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 person.

C. No return need be filed by any person who is exempt under §609, provided that the Office of the Navajo Tax Commission may require such person to file the information necessary to establish its exempt status.

D. In the case of the exemption provided for in §609(A), the filing by a person of a proper certificate of exemption with the Office of the Navajo Tax /Commission shall constitute a claim for exemption.

§1013. 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.

**\$1014. 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.

**\$1015. Reserved****\$1016. Reserved****\$1017. Reserved****\$1018. Reserved****\$1019. Reserved****\$1020. Allocation of Revenue**

After allocation to permanent or special revenue funds as required by Navajo Nation law, and allocation to the Tax Administration Suspense Fund as required by the fiscal policy adopted by the Navajo Tax Commission for such Fund, the net revenue from this Chapter shall be disbursed as follows:

A. One hundred percent (100%) of the Healthy Diné Nation Act of 2014 revenue collected from retail establishments located in the Navajo Nation shall be deposited into the Community Wellness Development Projects Fund to be appropriated pursuant to a fund management plan approved by

the Budget and Finance Committee and administered by the Division of Community Development; and

B. The Division shall disburse the funds to the chapters as seed money for leverage to initiate, match, and/or improve community wellness projects.

**1021. No Conflict with Local Governance Act**

The provisions of this Chapter and corresponding regulations shall not be construed inconsistently with the Local Governance Act, 26 N.N.C §§ 1-2008.

**§1022. 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.

**§1023. Reserved**

**§1024. 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.

**Section 3. Development of a Fund Management Plan**

The Division of Community Development is hereby directed to develop a Community Wellness Development Projects Fund Management Plan.

**Section 4. Effective Date**

The amendments enacted herein shall be effective pursuant to 2 N.N.C. §221(B), and after the Navajo Tax Commission has promulgated the regulations, but no later than October 1, 2014.

**Section 5. Codification**

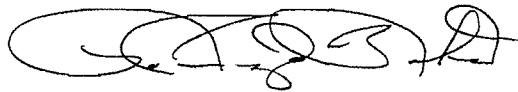
The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

**Section 6. Savings Clause**

Should any portion of the amendment enacted herein be determined invalid by the Navajo Nation Supreme Court, or the District Court of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions not determined invalid shall remain in law of the Navajo Nation.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the 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 10 in favor and 4 opposed, this 14<sup>th</sup> day of November 2014.



LoRenzo Bates, Pro Tem Speaker  
Navajo Nation Council

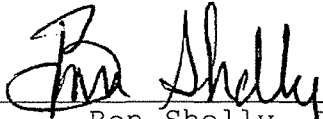
11-17-14

Date

Motion: Honorable Jonathan Nez  
Second: Honorable Nelson BeGaye

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 \_\_\_\_\_ day of NOV 21 2014 2014.

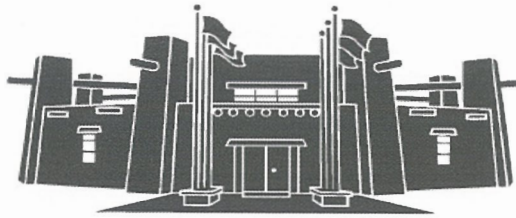


Ben Shelly, President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. \$1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2014 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President  
Navajo Nation





## MEMORANDUM

TO: Honorable Amber Crotty  
Delegate 24<sup>th</sup> Navajo Nation Council

FROM: Mariana Kahn  
Mariana Kahn, Attorney  
Office of Legislative Counsel

DATE: November 4, 2020

SUBJECT: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACT  
RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT,  
BUDGET AND FINANCE, HEALTH, EDUCATION AND HUMAN  
SERVICES, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO  
NATION COUNCIL; AMENDING TITLE 24 CHAPTER 11, HEALTHY DINÉ  
NATION ACT OF 2014 AT 24 N.N.C. §§ 1001 – 1024

I have prepared the above-referenced proposed pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, “the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration.” 2 N.N.C. §164(A)(5).

Please ensure that this particular legislation request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0278-20\_\_

SPONSOR: Amber Kanazbah Crotty

**TITLE: An Act Relating To Law And Order, Resources And Development, Budget And Finance, Health, Education And Human Services, And Naabik'iyáti' Committees And The Navajo Nation Council; Amending Title 24 Chapter 11, Healthy Dine Nation Act Of 2014 At 24 N.N.C. §§ 1001 - 1024**

***Date posted:*** November 6, 2020 at 12:55PM

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Written comments may be mailed to:

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

**Please note:** This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY**

**LEGISLATION NO.:** 0278-20

**SPONSOR:** Honorable Amber Kanazbah Crotty

**TITLE:** An Act Relating to Law and Order, Resources and Development, Budget and Finance, Health, Education and Human Services, and Naabik'iyati' Committees and the Navajo Nation Council; Amending Title 24 Chapter 11, Healthy Dine Nation Act of 2014 at 24 N.N.C. §§ 1001 - 1024

**Posted:** November 6, 2020 at 12:55 PM

**5 DAY Comment Period Ended:** November 11, 2020

**Digital Comments received:**

<b>Comments Supporting</b>	<i>None</i>
<b>Comments Opposing</b>	<i>None</i>
<b>Comments/Recommendations</b>	<i>None</i>

  
\_\_\_\_\_  
**Legislative Tracking Secretary  
Office of Legislative Services**

11/12/20 9:00 AM  
\_\_\_\_\_  
**Date/Time**

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0278-20

SPONSOR: Honorable Amber Kanazbah Crotty

**TITLE: An Act Relating to Law and Order, Resources and Development, Budget and Finance, Health, Education and Human Services, and Naabik'iyati' Committees and the Navajo Nation Council; Amending Title 24 Chapter 11, Healthy Dine Nation Act of 2014 at 24 N.N.C. §§ 1001 - 1024**

Posted: November 6, 2020 at 12:55 PM

5 DAY Comment Period Ended: November 11, 2020

Digital Comments received:

Comments Supporting	1) Dr. Priscilla R. Sanderson 2) Eleanore Harrison 3) Leroy and Anita Tsosie 4) Raiko Urias
Comments Opposing	<i>None</i>
Comments/Recommendations	1) Brian D. Parrish, NNGE

  
\_\_\_\_\_  
Legislative Tracking Secretary  
Office of Legislative Services

11/16/20      1:36pm  
\_\_\_\_\_  
Date/Time

# Delegate Crotty's Navajo Legislation number 0278-20

Priscilla R Sanderson <Priscilla.Sanderson@nau.edu>

Mon 11/16/2020 1:10 PM

To: comments <comments@navajo-nsn.gov>;

Dear Navajo Nation,

As a member of the Navajo Nation and Shiprock Chapter member, I support continuation and amendments to the Healthy Dine' Nation Act (HDNA). The HDNA has a 2% tax on "Unhealthy Foods" on Navajoland.

Thank you,  
Dr. Sanderson

Priscilla R. Sanderson, Ph.D., CRC  
Professor  
Health Sciences Department  
College of Health and Human Services  
SAS (Bldg 20), PO Box 15095  
Northern Arizona University  
Flagstaff, AZ 86011  
Telephone: (928)

***Northern Arizona University sits at the base of the San Francisco Peaks, on homelands sacred to Native Americans throughout the region. We honor their past, present, and future generations, who have lived here for millennia and will forever call this place home.***

WARNING: External email. Please verify sender before opening attachments or clicking on links.

## Re: 0278-20 Comment

Eleanore Berg <elhberg@yahoo.com>

Mon 11/16/2020 1:07 PM

To: Denisa Livingston <denisaworldwide@gmail.com>; comments <comments@navajo-nsn.gov>; Raiko Urias <urias\_5682@hotmail.com>;

Cc: Danny Simpson <simpson634@yahoo.com>; Anita Tsosie <anitajtsosie@gmail.com>; yearofhealth@gmail.com <yearofhealth@gmail.com>; Irmalivingston <irmalivingston@gmail.com>; Joshua Brannon Harrison <tribalshooz@hotmail.com>; Ajah Yellowhair <ajahyellowhair@gmail.com>; Regina Scott <gibbiestone77@gmail.com>; Kayla Tom <kayla.tom89@gmail.com>; hannah • <hnnhberg@gmail.com>; Paul Berg <pwberg77@yahoo.com>; Denise Y. Jensen <djensen@navajoprep.com>; Raymond Foxworth <rfoxworth@firstnations.org>; Jackie Francke <jfrancke@firstnations.org>; Roman McCabe <mccaber@sanjuancollege.edu>; Mike Bidtah <mikeless@gmail.com>; Shawn Harrison <laterpotater91@gmail.com>;

November 16, 2020

Navajo Nation  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515

### **RE: Legislation 0278-20, Approval and Reauthorization of the *Healthy Diné Nation Act of 2014***

Dear 24th Navajo Nation Council,

We honor you as our leaders in this renewal of our historical and living law of the *Healthy Dine Nation Act of 2014*. We appreciate and value your continued support, expertise, and careful stewardship of our historical legislative grassroots efforts that includes the past three administrations and councils of the Navajo Nation Government. Our efforts have been and still is deeply rooted in intergenerational collective action, in community, and in relationship to address our diabetes epidemic, to reclaim our identity through traditional healthy food, and to improve the health and well-being of our people through the funding of *Community Wellness Projects* made possible by our Act.

We are continuing to address the inhumanity of food apartheid that we face on our Diné Nation and the continued presence of harmful foods and beverages that are contaminating our traditional lifeways and foodways. In this COVID-19 pandemic, many of our people are challenged by numerous vulnerabilities with pre-existing health conditions and **it is imperative to continue to protect the health and well-being of our tribal citizens and community members**. The dominating presence of *ch'iyáán bizhool*, unhealthy foods and beverages are controlling our food access points more than ever and have increased the risk, exposure, and possible contraction of the novel coronavirus *Dikos Ntsaaígíí-Náhást'éíts'áadah* for our people. If we are not mindful of this reality and the consequences, the outcome could be detrimental. We have a collective responsibility to steward the way forward in healing and resilience.

We, DCAA, the Diné Community Advocacy Alliance, the grassroots collective who have been leading these efforts together with the original legislative sponsor, Mr. Danny Simpson, have reviewed the

Legislation 0278-20 and the Exhibit A in reference to the recommendations of the Navajo Tax Commission. These requests are not a creation of new language but an emphasis on the definitions that already exist in the unhealthy food definitions we submitted to the Office of the Navajo Tax Commission shortly after it was signed into law. Here are our five (5) requests of the proposed amendments:

- 1) We support the legislation to **retain the historical and intended title of the “Healthy Diné Nation Act of 2014” with a supportive tax category title of the “Unhealthy Food and Beverage Tax”;**
- 2) We support the legislation to **delete the review of the end of the calendar year 2020 with no expiration date;**
- 3) In §1107. Definitions, under L, line 19, “Sweetened Beverages means nonalcoholic” the legislation would include the language “and alcoholic drinks” to read **“Sweetened Beverages means nonalcoholic and alcoholic drinks”** and to include in the examples **“alcoholic-free wine and beer”** with a deletion of the word “alcohol” in line 29;
- 4) In §1107. Definitions, under M, line 6, after “and such other foods and beverages as the Navajo Tax Commission may designate as unhealthy from time to time in the Tax Regulations” the following language should be included “which may include newly engineered and marketed unhealthy foods as they become available” to read **“and such other food and beverages as the Navajo Tax Commission may designate as unhealthy from time to time in the Tax Regulations which may include newly engineered and target marketed unhealthy foods as they become available.”**; and
- 5) In §1107. Definitions, under M, the legislation would include **“Fast Food”** with a definition of **“means any foods quickly accessible, prepared, quickly served, and ready to eat. This includes food or food items that were previously kept frozen/cold and cooked/warmed up to order and/or ready for consumption; and/or food that is kept warm using heat lamps or other devices; and/or sold heated or cold; and/or sold in “to go” containers; and/or canned, and/or preserved; and/or consumed on or off the premises where they are sold. It shall include but not limited to burritos, hamburgers, fried chicken, chicken wings, chicken tenders, corn dogs, egg rolls, fried okra, french fries, hot dogs, mozzarella sticks, nachos, pickles, sold individually or prepackaged individually pizza, potato wedges, taquitos, and precooked meats and potted meats like Vienna sausage, Spam, and Spam Lite.”**

Please continue to lead us towards the vision of a Healthy Diné Nation with healthy future generations. **Let's stand in health solidarity of healthful and nutritious food and water as life, *ch'iyáán yá'át'éhégi dóó tó éí íiná át'é.*** Again, we are very appreciative of your continued leadership and guidance of our grassroots efforts.

Thank you in advance for your inclusion of community participation and engagement.

If you have any questions, please contact us. We look forward to the renewal of the Act.

Ahéhee',

Eleanore Harrison  
Red Valley Chapter



## 0278-20 Comment

Anita Tsosie <anitajtsosie@gmail.com>

Mon 11/16/2020 1:07 PM

To: comments <comments@navajo-nsn.gov>;

Cc: Denisa Livingston <denisaworldwide@gmail.com>; Danny Simpson <simpson634@yahoo.com>;

Dear 24th Navajo Nation Council,

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- 2) We support the legislation to **delete the review of the end of the calendar year 2020 with no expiration date**;
- 3) In §1107. Definitions, under L, line 19, “Sweetened Beverages means nonalcoholic” the legislation would include the language “and alcoholic drinks” to read **“Sweetened Beverages**



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Ahéhee’,

Leroy and Anita Tsosie  
Rock Point Chapter  
DCAA Advocates

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Re: Team please send your comments

Raiko Urias <urias\_5682@hotmail.com>

Mon 11/16/2020 1:07 PM

To: Denisa Livingston <denisaworldwide@gmail.com>; Danny Simpson <simpson634@yahoo.com>; Anita Tsosie <anitajtsosie@gmail.com>; yearofhealth@gmail.com <yearofhealth@gmail.com>; Irmalivingston <irmalivingston@gmail.com>; Eleanore Harrison <elhberg@yahoo.com>; Joshua Brannon Harrison <tribalshooz@hotmail.com>; Ajah Yellowhair <ajahyellowhair@gmail.com>; Regina Scott <gibbiestone77@gmail.com>; Kayla Tom <kayla.tom89@gmail.com>; hannah • <hnnhberg@gmail.com>; Paul Berg <pwberg77@yahoo.com>; Denise Y. Jensen <djensen@navajoprep.com>; Raymond Foxworth <rfoxworth@firstnations.org>; Jackie Francke <jfrancke@firstnations.org>; Roman McCabe <mccaber@sanjuancollege.edu>; Mike Bidtah <mikeless@gmail.com>; comments <comments@navajo-nsn.gov>;

November 16, 2020

Navajo Nation  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515

**RE: Legislation 0278-20, Approval and Reauthorization of the  
*Healthy Diné Nation Act of 2014***

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If you have any questions, please contact us. We look forward to the renewal of the Act.

Ahéhee',

Raiko Urias  
DCAA Advocate  
Shiprock Chapter



## Navajo Nation Gaming Enterprise

Ph. 505.905.7100 Fax: 505.905.7240

Post Office Box 1700 Church Rock, NM 87311 | Shipping Address: 249 E. NM 118 St. Hwy Church Rock, NM 87311

November 11, 2020

Executive Director  
Navajo Nation Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515

**RE: Navajo Nation Gaming Enterprise's Comments to Legislation 0278-20 "Amending Title 4 Chapter 11, Healthy Diné Nation Act of 2014 at 24 N.N.C. §§ 1001-1024"**

Members of the Navajo Nation Council:

The Navajo Nation Gaming Enterprise (NNGE) appreciates the opportunity to comment on this legislation. NNGE believes many of the proposed revisions contemplated under this legislation strengthen, clarify, and make administration of the Healthy Diné Nation Act of 2014 (Act) easier for both the Office of the Navajo Tax Commission (ONTC) and businesses operating on the Navajo Nation. However, the proposed revisions to the Act fail to address how the Act is to be applied to buffets and side dishes (ordered as part of a meal). NNGE previously raised these concerns with the ONTC in April 2015.

A business owner serving food from a buffet, such as NNGE does at three of its four casinos, does not know which specific food items an individual patron will select from the unlimited buffet choices provided to them. The patron can select healthy or unhealthy food items. It is unrealistic to expect employees to closely watch a buffet patron's food selections to determine whether each of their specific food choices include "unhealthy foods and beverages". How is a business, such as NNGE, to calculate the tax owed under the Act when each individual buffet customer is making their own food choices from a large selection of food options?

Additionally, how does the tax apply to side dishes? For example, when a customer orders a healthy main food meal such as a grilled breast of chicken, they are given a choice of sides. These side dishes are provided to the customer at no additional charge. These sides could include a potato, salad, fresh fruit, coleslaw, potato chips, or french fries. Assuming for arguments sake that potato chips fall within the scope of the tax, how would NNGE determine the tax on the potato chips when the healthy main food item is not taxed and the side dishes come at no additional cost with the healthy main food meal?

In light of these concerns, NNGE recommends that Section 1109(A)(8) be amended to include buffets and side dishes (ordered as a part of a meal) as exemptions and exclusions from the tax imposed by the Act. With NNGE's recommended additions, Section 1109. A.8. (page 12 of 15, line 7, of the Legislation 0278-20) would now read:

8. Sales from coin-operated vending machines of any type, buffets and side dishes (ordered as a part of a meal);

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "B. D. Parrish". The signature is stylized with a large initial "B" and a long horizontal stroke.

Brian D. Parrish  
Interim Chief Executive Officer



**LAW AND ORDER COMMITTEE**

**SECOND YEAR 2020**

**COMMITTEE REPORT**

Mr. Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

**Legislation No. 0278-20:** An Act Relating to Law and Order, Resources and Development, Budget and Finance, Health, Education and Human Services, and Naabik'iyati' Committees and the Navajo Nation Council; Amending Title 24 Chapter 11, Healthy Diné Nation Act of 2014 at 24 N.N.C. §§1001 – 1024 = *Sponsors: Honorable Amber Kanazbah Crotty/Honorable Mark Freeland/Honorable Otto Tso*

Has had it under consideration and reports the same with the recommendation that it **DO PASS** with no amendments

And thereafter referred to Resources & Development Committee

Respectfully submitted,



Eugenia Charles-Newton, Chairwoman  
Law and Order Committee  
24<sup>th</sup> Navajo Nation Council

Date: November 16, 2020

Main Motion: Honorable Vince James  
Second : Honorable Eugene Tso  
Vote : 3-0-2 (Chairwoman not voting)

**LAW AND ORDER COMMITTEE**  
**Regular Meeting**  
**November 16, 2020**

**Legislation No. 0278-20:** An Act Relating to Law and Order, Resources and Development, Budget and Finance, Health, Education and Human Services, and Naabik'iyati' Committees and the Navajo Nation Council; Amending Title 24 Chapter 11, Healthy Diné Nation Act of 2014 at 24 N.N.C. §§1001 – 1024 = *Sponsors: Honorable Amber Kanazbah Crotty/Honorable Mark Freeland/Honorable Otto Tso*

**VOTE TALLY SHEET:**

Motion: Vince James

Second: Eugene Tso

Vote: 3-0-2

Vote Tally:

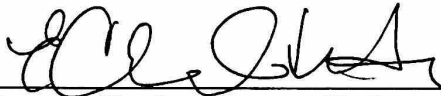
Yea: Vince James/Eugene Tso/Otto Tso

Nay:

Not Voting: Eugenia Charles-Newton

Excused:

Absent: Edmund Yazzie

  
\_\_\_\_\_  
Eugenia Charles-Newton, Chairwoman  
Law and Order Committee

\_\_\_\_\_  
Laureen Spencer, Legislative Advisor  
Office of Legislative Services

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0278-20

SPONSOR: Honorable Amber Kanazbah Crotty

**TITLE: An Act Relating to Law and Order, Resources and Development, Budget and Finance, Health, Education and Human Services, and Naabik'iyati' Committees and the Navajo Nation Council; Amending Title 24 Chapter 11, Healthy Dine Nation Act of 2014 at 24 N.N.C. §§ 1001 - 1024**

Posted: November 6, 2020 at 12:55 PM

5 DAY Comment Period Ended: November 11, 2020

Digital Comments received:

Comments Supporting	1) Denisa Livingston 2) Eleanore Harrison 3) Joshua Harrison 4) Kayla Tom 5) Irma Livingston 6) Hannah Berg 7) Nathan Urias 8) Roman McCabe
Comments Opposing	<i>None</i>
Comments/Recommendations	1) Gabriel Yazzie, The Kayenta Township

  
 Legislative Tracking Secretary  
 Office of Legislative Services  
11/19/20 12:15pm  
 Date/Time



Diné Community Advocacy Alliance (DCAA)  
P.O. Box 1884  
Fruitland, NM 87416



November 16, 2020

Navajo Nation  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515

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Denisa Livingston and DCAA Advocates

Mr. Danny Simpson  
Mr. Leroy Tsosie Mrs.  
Anita Tsosie  
Dennis Livingston  
Irma Livingston  
Mackee Bancroft

Eleanore Harrison  
Jessie Harrison  
Raiko Urias  
Joshua Harrison  
Regina Scott  
Ajah Yellowhair

Kayla Tom  
Hannah Berg  
Shawn Harrison  
Michael Bidtah  
Denise Jensen  
Roman McCabe

Re: 0278-20 Comment

Eleanore Berg <elhberg@yahoo.com>

Mon 11/16/2020 1:07 PM

To: Denisa Livingston <denisaworldwide@gmail.com>; comments <comments@navajo-nsn.gov>; Raiko Urias <urias\_5682@hotmail.com>;

Cc: Danny Simpson <simpson634@yahoo.com>; Anita Tsosie <anitajtsosie@gmail.com>; yearofhealth@gmail.com <yearofhealth@gmail.com>; Irmalivingston <irmalivingston@gmail.com>; Joshua Brannon Harrison <tribalshooz@hotmail.com>; Ajah Yellowhair <ajahyellowhair@gmail.com>; Regina Scott <gibbiestone77@gmail.com>; Kayla Tom <kayla.tom89@gmail.com>; hannah • <hnnhberg@gmail.com>; Paul Berg <pwberg77@yahoo.com>; Denise Y. Jensen <djensen@navajoprep.com>; Raymond Foxworth <rfoxworth@firstnations.org>; Jackie Francke <jfrancke@firstnations.org>; Roman McCabe <mccaber@sanjuancollege.edu>; Mike Bidtah <mikeless@gmail.com>; Shawn Harrison <laterpotater91@gmail.com>;

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Ahéhee’,

Eleanore Harrison  
Red Valley Chapter

# Re: 0278-20 Comment

Brannon Harrison <tribalshooz@hotmail.com>

Tue 11/17/2020 6:27 PM

To: comments <comments@navajo-nsn.gov>;

Cc: Denisa Livingston <denisaworldwide@gmail.com>; Danny Simpson <simpson634@yahoo.com>; Anita Tsosie <anitajtsosie@gmail.com>; yearofhealth@gmail.com <yearofhealth@gmail.com>; Irmalivingston <irmalivingston@gmail.com>; Eleanore Harrison <elhberg@yahoo.com>; Raiko Urias <urias\_5682@hotmail.com>; Ajah Yellowhair <ajahyellowhair@gmail.com>; Regina Scott <gibbiestone77@gmail.com>; Kayla Tom <kayla.tom89@gmail.com>; hannah • <hnnhberg@gmail.com>; Paul Berg <pwberg77@yahoo.com>; Denise Y. Jensen <djensen@navajoprep.com>; Raymond Foxworth <rfoxworth@firstnations.org>; Jackie Francke <jfrancke@firstnations.org>; Roman McCabe <mccaber@sanjuancollege.edu>; Mike Bidtah <mikeless@gmail.com>; Shawn Harrison <laterpotater91@gmail.com>;

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Ahéhee',

Joshua B. Harrison  
DCAA Advocate  
Red Valley Chapter

Sent from my iPhone

On Nov 16, 2020, at 12:34 PM, Denisa Livingston <[denisaworldwide@gmail.com](mailto:denisaworldwide@gmail.com)> wrote:

Yá'át'ééh Executive Director of the Navajo Nation Office of Legislative Services,

Attached is a support letter for the Legislation 0278-20, Renewal and Reauthorization of the Healthy Diné Nation Act.

Thank you,  
Denisa Livingston and DCAA Advocates

Denisa Livingston, M.P.H. (*Dine Woman*)  
*Community Health Advocate • Food & Health Justice Organizer*  
Diné Community Advocacy Alliance (DCAA) (*@DineAdvocacy*)  
*International Indigenous Councilor of the Global North*  
Slow Food International (*@SlowFoodHQ*)

<0279-20\_Renewal\_DCAA\_Comment\_NN24thCouncil.pdf>

WARNING: External email. Please verify sender before opening attachments or clicking on links.

# Re: 0278-20 Comment

Kayla Tom <kayla.tom89@gmail.com>

Tue 11/17/2020 6:27 PM

To: comments <comments@navajo-nsn.gov>;

Cc: Denisa Livingston <denisaworldwide@gmail.com>; Danny Simpson <simpson634@yahoo.com>; Anita Tsosie <anitajtsosie@gmail.com>; yearofhealth@gmail.com <yearofhealth@gmail.com>; Eleanore Harrison <elhberg@yahoo.com>; Raiko Urias <urias\_5682@hotmail.com>; Joshua Brannon Harrison <tribalshooz@hotmail.com>; Ajah Yellowhair <ajahyellowhair@gmail.com>; Regina Scott <gibbiestone77@gmail.com>; hannah • <hnnhberg@gmail.com>; Paul Berg <pwberg77@yahoo.com>; Denise Y. Jensen <djensen@navajoprep.com>; Raymond Foxworth <rfoxworth@firstnations.org>; Jackie Francke <jfrancke@firstnations.org>; Roman McCabe <mccaber@sanjuancollege.edu>; Mike Bidtah <mikeless@gmail.com>; Shawn Harrison <laterpotater91@gmail.com>; Irmalivingston <irmalivingston@gmail.com>;

November 16, 2020

Navajo Nation  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515

RE: Legislation 0278-20, Approval and Reauthorization of the  
*Healthy Diné Nation Act of 2014*

Dear 24th Navajo Nation Council,

We honor you as our leaders in this renewal of our historical and living law of the *Healthy Dine Nation Act of 2014*. We appreciate and value your continued support, expertise, and careful stewardship of our historical legislative grassroots efforts that includes the past three administrations and councils of the Navajo Nation Government. Our efforts have been and still is deeply rooted in intergenerational collective action, in community, and in relationship to address our diabetes epidemic, to reclaim our identity through traditional healthy food, and to improve the health and well-being of our people through the funding of *Community Wellness Projects* made possible by our Act.

We are continuing to address the inhumanity of food apartheid that we face on our Diné Nation and the continued presence of harmful foods and beverages that are contaminating our traditional lifeways and foodways. In this COVID-19 pandemic, many of our people are challenged by numerous vulnerabilities with pre-existing health conditions and it is **imperative to continue to protect the health and well-being of our tribal citizens and community members**. The dominating presence of *ch'iyáán bizhoal*, unhealthy foods and beverages are controlling our food access points more than ever and have increased the risk, exposure, and possible contraction of the novel coronavirus *Dikos Ntsaaígíí-Náhást'éíts'áadah* for our people. If we are not mindful of this reality and the consequences, the outcome could be detrimental. We have a collective responsibility to steward the way forward in healing and resilience.

We, DCAA, the Diné Community Advocacy Alliance, the grassroots collective who have been leading these efforts together with the original legislative sponsor, Mr. Danny Simpson, have reviewed the Legislation 0278-20 and the Exhibit A in reference to the recommendations of the Navajo Tax Commission. These requests are not a creation of new language but an emphasis on the definitions that already exist in the unhealthy food definitions we submitted to the Office of the Navajo Tax Commission shortly after it was signed into law. Here are our five (5) requests of the proposed amendments:

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Please continue to lead us towards the vision of a Healthy Diné Nation with healthy future generations. Let's stand in health solidarity of healthful and nutritious food and water as life, *ch'iyáán yá'át'éhégi dóó tó éí íiná át'é*. Again, we are very appreciative of your continued leadership and guidance of our grassroots efforts.

Thank you in advance for your inclusion of community participation and engagement.

If you have any questions, please contact us. We look forward to the renewal of the Act.

Ahéhee'!

Kayla Tom  
DCAA Advocate  
Shiprock Chapter

On Monday, November 16, 2020, [irmalivingston@gmail.com](mailto:irmalivingston@gmail.com) <[irmalivingston@gmail.com](mailto:irmalivingston@gmail.com)> wrote:  
November 16, 2020

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Office of Legislative Services  
P.O. Box 3390

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If you have any questions, please contact us. We look forward to the renewal of the Act.

Ahéhee',

Irma Livingston  
DCAA Advocate  
Red Valley Chapter

Sent from my iPhone

On Nov 16, 2020, at 10:34 AM, Denisa Livingston <[denisaworldwide@gmail.com](mailto:denisaworldwide@gmail.com)> wrote:

Yá'át'ééh Executive Director of the Navajo Nation Office of Legislative Services,

Attached is a support letter for the Legislation 0278-20, Renewal and Reauthorization of the Healthy Diné Nation Act.

Thank you,  
Denisa Livingston and DCAA Advocates

Denisa Livingston, M.P.H. *(Diné Nation)*  
Community Health Advocate – Food & Health Justice Organizer  
Diné Community Advocacy Alliance (DCAA) @DineAdvocacy

# Re: 0278-20 Comment

hannah • <hnnhberg@gmail.com>

Tue 11/17/2020 6:27 PM

To: Denisa Livingston <denisaworldwide@gmail.com>;

Cc: comments <comments@navajo-nsn.gov>; Danny Simpson <simpson634@yahoo.com>; Anita Tsosie <anitajtsosie@gmail.com>; yearofhealth@gmail.com <yearofhealth@gmail.com>; Irmalivingston <irmalivingston@gmail.com>; Eleanore Harrison <elhberg@yahoo.com>; Raiko Urias <urias\_5682@hotmail.com>; Joshua Brannon Harrison <tribalshooz@hotmail.com>; Ajah Yellowhair <ajahyellowhair@gmail.com>; Regina Scott <gibbiestone77@gmail.com>; Kayla Tom <kayla.tom89@gmail.com>; Paul Berg <pwberg77@yahoo.com>; Denise Y. Jensen <djensen@navajoprep.com>; Raymond Foxworth <rfoxworth@firstnations.org>; Jackie Francke <jfrancke@firstnations.org>; Roman McCabe <mccaber@sanjuancollege.edu>; Mike Bidtah <mikeless@gmail.com>; Shawn Harrison <laterpotater91@gmail.com>;

November 16, 2020

Navajo Nation  
Office of Legislative Services  
P.O. Box 3390

Window Rock, AZ 86515

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If you have any questions, please contact us. We look forward to the renewal of the Act.

Ahéhee',  
Hannah Berg  
Shiprock, NM  
DCAA Advocate

On Mon, Nov 16, 2020, 10:34 AM Denisa Livingston <[denisaworldwide@gmail.com](mailto:denisaworldwide@gmail.com)> wrote:  
Yá'át'ééh Executive Director of the Navajo Nation Office of Legislative Services,

Attached is a support letter for the Legislation 0278-20, Renewal and Reauthorization of the Healthy Diné Nation Act.

Thank you,  
Denisa Livingston and DCAA Advocates

Denisa Livingston, M.P.H. <https://www.slowfood.org>  
Community Health Advocate - Food & Health Justice Organizer  
Diné Community Advocacy Alliance (DCAA) [@DineAdvocacy](https://www.dineadvocacy.org)  
International Indigenous Councilor of the Global North  
Slow Food International @SlowFoodHQ

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## 0278-20 Comment

Nathan Urias <tenurias@gmail.com>

Tue 11/17/2020 6:27 PM

To: comments <comments@navajo-nsn.gov>;

Cc: info@dineadvocacy.org <info@dineadvocacy.org>; urias\_5682@hotmail.com <urias\_5682@hotmail.com>;  
denisaworldwide@gmail.com <denisaworldwide@gmail.com>;

November 16, 2020

Navajo Nation  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515

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Based on the intention of the bill to provide support for the Navajo Tax Commission, we appreciate their commitment to continue to work towards effective administration and enforcement of these efforts. We support the DCAA requests to retain the historical and visionary title of the *Healthy Diné Nation Act of 2014* with no expiration date, to continue to include alcoholic beverages, newly target marketed food and beverages, and fast food.

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*I truly believe health and wellness is important. The work needs to continue to bring health and wellness to other families.*

WARNING: External email. Please verify sender before opening attachments or clicking on links.

# Legislation 0278-20, Approval and Reauthorization of the

Roman McCabe <mccaber@sanjuancollege.edu>

Tue 11/17/2020 6:27 PM

To: comments <comments@navajo-nsn.gov>;

November 16, 2020

Navajo Nation  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515

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Ahéhee',

Roman McCabe  
**DCAA Advocate**  
**Nenahnezad Chapter**

**HAPPY TRAILS!**

Roman McCabe





## The Kayenta Township Commission

P.O. Box 1490 Kayenta, AZ 86033 Telephone: (928) 697-8451 FAX (928) 697-8461 [www.kayentatownship-nsn.gov](http://www.kayentatownship-nsn.gov)

November 18, 2020

VIA EMAIL TO: [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Tom Platero, Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515

Re: Legislation No. 0278-20

Dear Mr. Platero:

The Kayenta Township is hereby providing comments on Legislation No. 0278-20, which would amend the Healthy Dine Nation Act of 2014 (the "Legislation"). As currently drafted, the Legislation should be rejected as it would upset legitimate and settled expectations of the Kayenta Township and its businesses that the Township would not be subjecting businesses (as the taxing authority), and businesses would not be subjected to (as the taxpayer), double taxation.

The Legislative Summary for the Legislation provides that:

*The purpose of this legislation is to approve amendments to the Healthy Dine Nation Act of 2014, 24 N.N.C. §§ 1001 – 1024. The legislation would delete language regarding review by the Navajo Nation Council at the end of calendar year 2020 for extension by the Navajo Nation Council. The amendments purpose is also to clarify provisions for its effective administration and enforcement.*

In fact, the Legislation goes far beyond "clarification" and contains a substantive amendment that would cause double taxation of businesses in the Kayenta Township and within the jurisdiction of any Local Governance Act (LGA) certified chapter that has also enacted a Junk Food Tax.

Subsequent to the Nation's adopting the Healthy Dine Nation Act of 2014, the Kayenta Township Commission ("Commission") adopted its own Junk Food Tax Ordinance ("Ordinance"), by Resolution No. KRCAU-42-17 (Aug. 22, 2017), attached hereto as Exhibit "A," which is also 2% of gross receipts of sales of junk food. The Ordinance was enacted by the Commission on the express understanding that the Navajo Nation Tax Commission, by Resolution No. TAX-15-224, had approved an "offset" or "credit" for junk food tax paid to the Township or to LGA certified chapters, under Section 11.111 of the Healthy Dine Nation Junk Food Tax Regulations. Specifically, the Commission relied on the following regulation, provided to the Township by the Office of Navajo Tax Commission ("ONTC"):

### **11.111. RELATIONSHIP WITH TOWNSHIP AND CHAPTER TAXES**



For purposes of filing and reporting under this Junk Food Tax, when a taxpayer pays Junk Food 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 1100.

Example: ABC Company has three stores: one in Kayenta, one in To'Nanees'Dizi, and one in Chinle. ABC pays the Junk Food Tax on its sales at the Kayenta location and the To'Nanees'Dizi Junk Food Tax on its sales at the To'Nanees Dizi location. When ABC is reporting and paying the Navajo Junk Food Tax on Form 1100, 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.

See composite Exhibit “B.”<sup>1</sup> Indeed, this is exactly how the Navajo Nation treats the Navajo Nation Sales Tax when the Kayenta Township or an LGA certified chapter has a gross receipts tax in place – the Nation effectively exempts sales within those jurisdictions from collection of the central government’s sales tax by allowing a “credit” or deduction of gross sales reported to ONTC. Thus, since 2017, the Township’s businesses have been able to subtract gross sales of junk food within the Township from gross sales of junk food reported to the Office of the Navajo Tax Commission for purposes of the Healthy Dine Nation Junk Food Tax, so that businesses would not have to pay junk food tax to both the Nation and the Township.

However, Legislation No. 0278-20 would upturn the apple cart by adding the following provision to the Healthy Dine Nation Act of 2014:

**§1110. Credits**

There shall be no credits. A person shall not be permitted to take a credit against the tax imposed by this Chapter for taxes paid pursuant to any nondiscriminatory excise tax imposed by any duly established township or local government sub-unit.

This amendment flies in the face of years of settled expectations that the Navajo Nation would not double tax other Navajo Nation local governance jurisdictions who have their own junk food tax, which they use for their own local health initiatives. It is also contrary to established Navajo customary law principles favoring local governance. Accordingly, the Legislation should be rejected by the Navajo Nation Council, or, in the alternative, the proposed new Section 1110 of Legislation No. 0278-20 should be stricken from the Legislation.

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<sup>1</sup> Altered regulations were (and may still be) posted on ONTC’s website that cut and pasted a *non-sequitur* from Regulation 6.122 of the Sales Tax Regulations into Regulation No. 11.111 of the Healthy Dine Nation Junk Food Tax Regulations. By January 12, 2018 letter from Mr. Martin Ashley, Executive Director, ONTC, Mr. Ashley confirmed that the original regulations the Township received were still in effect pursuant to Resolution No. TAX-15-224. Mr. Ashley’s letter is attached to the Township’s Ordinance, posted on its website. See Exhibit “A,” at 12. Mr. Ashley also confirmed in his letter that the Township’s instructions to its businesses for the junk food tax offset against the Nation’s junk food tax were correct. See *id.*

Thank you for your and our other Leaders' careful consideration of the comments of the Kayenta Township on Legislation No. 0278-20.

Sincerely,

THE KAYENTA TOWNSHIP

A handwritten signature in black ink, appearing to read 'Gabriel Yazzie', with a long horizontal line extending to the right.

Gabriel Yazzie  
Town Manager

c: Ed Seaton, Chairman  
Kayenta Township Commission



# THE KAYENTA TOWNSHIP

P.O. BOX 1490 KAYENTA, AZ 86033 • PHONE (928) 697-8451 FAX (928) 697-8461

*Continuing the legacy of brilliant leadership through local empowerment since 1916.*



## Resolution No: KTCAU-42-17

### RESOLUTION OF THE KAYENTA TOWNSHIP COMMISSION

#### Approving the Junk Food Tax Ordinance as Subchapter 4 of Chapter 8 of the Kayenta Township Ordinances

#### WHEREAS:

1. The Kayenta Township Commission ("Commission") is a home-rule municipality of the Navajo Nation with the general authority and responsibility to govern for the welfare of the Kayenta Township ("Township") and its residents, including the enactment of such ordinances, rules and regulations as it deems in the best interest of the Township. See 2 N.N.C. §§ 4081-4086 (2005); and

2. The Navajo Nation Council has granted the Township "home-rule" status under the governance of the Commission pursuant to Resolution CJY-42-03 (July 29, 2003) (*codified at 2 N.N.C. §§ 4081-4086 (2005)*), and the Navajo Nation Supreme Court has recognized the comprehensive authority of the Commission, including its authority to adopt, implement and enforce Township ordinances, in *Kayenta Township Commission v. Ward*, No. SC-CV-29-07 (Sup. Ct. Feb. 25, 2011); and

3. On November 17, 2014, by Resolution No. CN-54-14, the Navajo Nation Council adopted the Health Diné Nation Act of 2014, commonly referred to as the "Junk Food Tax," which was signed into law by then President Shelly on November 21, 2014. In Section 1 of Resolution No. CN-54-14, the Navajo Nation Council made substantial findings as to the value and benefits of such a Junk Food Tax, such findings which are wholly incorporated herein by reference; and

4. On January 14, 2015, by Resolution No. TAX-15-224, the Navajo Tax Commission adopted the Navajo Nation Junk Food Tax Regulations. The Nation's Junk Food Tax Regulations provide at Section 11.111 that for purposes of filing and reporting to the Navajo Nation under the Nation's Junk Food Tax, when a taxpayer pays a Junk Food Tax to the Kayenta Township, the gross receipts upon which the Township's tax has been paid are deducted from the gross receipts reported to the Office of the Navajo Tax Commission for purposes of the Nation's Junk Food Tax, *i.e.*, a taxpayer will not be subject to double taxation under the Nation's Junk Food Tax and a Kayenta Township Junk Food Tax but will be able to offset any such tax paid to the Township; and

5. The Commission has determined that the Junk Food Tax Ordinance attached hereto as Exhibit "A," in addition to the reasons set forth in Section 1 of Navajo Nation Council Resolution No. CN-54-14, should be adopted for the following reasons and purposes:

- a. To improve the health and welfare of the residents of the Kayenta Township and Kayenta Chapter and of tourists visiting the Kayenta area;
- b. To address obesity and diabetes and related health complications caused by unhealthy foods and beverages;
- c. To promote a healthy and sustainable food system for the Diné;
- d. To promote sustainable economic growth in the Kayenta Township and Kayenta area;

- e. To provide operating capital for governmental services for the benefit of the Township residents;
- f. To defray costs incurred in providing for the public welfare; and
- g. To support capital improvement needs of the Kayenta Township; and

8. The Junk Food Tax Ordinance, attached hereto as Exhibit "A," has been published for thirty (30) days public comment in accordance with Section 2-107 of the Administrative Rules and Procedures Ordinance, and the Commission has duly considered such comments in its decision today.

**NOW THEREFORE BE IT RESOLVED THAT:**

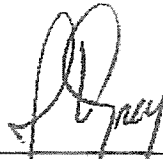
1. The Junk Food Tax Ordinance attached hereto as Exhibit "A" is hereby approved and adopted as Subchapter 4 of Chapter 8 of the Kayenta Township Ordinances, effective October 1, 2017.

2. The Town Manager is hereby authorized to take any reasonable and necessary actions to implement the intent of this Resolution.

**CERTIFICATION**

I hereby certify that the foregoing resolution was considered by the Kayenta Township Commission at a duly called meeting at Kayenta, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 4 in favor 0 opposed, and 0 abstained, this 22nd day of August, 2017.

Motion: Commissioner E. Seaton  
Second: Commissioner J. Williams

  
\_\_\_\_\_  
Rodger Grey, Chairperson  
Kayenta Township Commission

**CHAPTER 8  
KAYENTA TOWNSHIP TAX ORDINANCES**

**SUBCHAPTER 4  
JUNK FOOD TAX**

SECTION 8-401	TITLE
SECTION 8-402	AUTHORITY AND ADMINISTRATION
SECTION 8-403	PURPOSES
SECTION 8-404	NONDISCRIMINATION
SECTION 8-405	DEFINITIONS
SECTION 8-406	TAX IMPOSED
SECTION 8-407	RATE OF TAX
SECTION 8-408	LEGAL INCIDENCE OF TAX; RESPONSIBILITY FOR PAYMENT
SECTION 8-409	NO EXEMPTIONS
SECTION 8-410	RELATIONSHIP TO THE BUSINESS SALES TAX
SECTION 8-411	REGULATIONS
SECTION 8-412	SEVERABILITY
SECTION 8-413	EFFECTIVE DATE
SECTION 8-414	INCONSISTENT LAW REPEALED

## **JUNK FOOD TAX ORDINANCE**

### **SECTION 8-401 Title**

This Subchapter shall be known as "the Junk Food Tax Ordinance," Subchapter 4 of Chapter 8 of the Kayenta Township Tax Ordinances.

### **SECTION 8-402 Authority and Administration**

The Kayenta Township Commission adopts this Ordinance pursuant to 2 N.N.C. §§ 4081-4086. *See Kayenta Township Comm'n v. Ward*, No. SC-CV-29-07, slip op. at 10 (Nav. Sup. Ct. Feb. 25, 2011) ("By broad grant of power, the Township's control over its withdrawn land includes the right to govern its lands according to local ordinances"). The tax imposed by this Subchapter shall be administered pursuant to the Tax Administration Ordinance, Subchapter One of Chapter 8, Kayenta Township Tax Ordinances, as amended, and the regulations promulgated thereto, as amended.

### **SECTION 8-403 Purposes**

The purposes of this Subchapter are:

1. To improve the health and welfare of the residents of the Kayenta Township and Kayenta Chapter and of tourists visiting the Kayenta area;
2. To address obesity and diabetes and related health complications caused by unhealthy foods and beverages;
3. To promote a healthy and sustainable food system for the Diné;
4. To promote sustainable economic growth in the Kayenta Township and Kayenta area;
5. To provide operating capital for governmental services for the benefit of the Township residents;
6. To defray costs incurred in providing for the public welfare; and
7. To support capital improvement needs of the Kayenta Township.

### **SECTION 8-404 Nondiscrimination**

No provision of this subchapter shall be construed as imposing a tax which discriminates on the basis of whether a taxpayer is, or is owned or controlled by, one or more enrolled members of the Navajo Nation.

## SECTION 8-405 Definitions

The definitions from Subchapter One, Tax Administration, and Subchapter Three, Business Sales Tax Ordinance, shall apply to this Subchapter. In addition, as used in this Subchapter:

1. "Junk Food" means all sweetened beverages and prepackaged and non-prepackaged foods, including snacks, that have been generally stripped of essential nutrients and which are high in salt, saturated fat and/or sugar (including all of its variants, *e.g.*, cane sugar, fructose, corn syrup, etc.), including, as defined herein, Baked and Fried Goods, Candy, Frozen Desserts, Fruit Juice, Pastries, Powder or Base Product, Pudding and Gelatin Based Desserts, Snack Chips and Crisps, Sweetened Beverages, and Sweets.
2. "Baked and Fried Goods" means baked or fried dough, batter, mixes, and decoration products, including such goods as cakes, cookies, donuts and pastries that are high in salt, saturated fat, and/or sugar.
3. "Candy" means snacks prepared of various combinations of sugar (including all of its variants, *e.g.*, cane sugar, fructose, corn syrup, etc.), artificial sweeteners, honey, or other natural or artificial sweeteners, in combination with natural or artificial fruit flavors, fruit, chocolate, fudge, marshmallows, nuts, mints, peanut butter, peanut brittle, salt, white flour, or other similar ingredients or flavorings, whether wet, carbonated, chewy, soft, or hard, and in such forms as bars, drops, lozenges (but not drops or lozenges specifically used for medicinal purposes such as cough drops), liquid, spray, floss, crystals, tape, paper, thread, jelly, gum, powder, and pieces.
4. "Frozen Desserts" means any sweet item made by freezing liquid or semisolids, based on natural and/or artificially flavored water, fruit purees, dairy or dairy substitutes, and custards, and whether combined with fruits, nuts, candy, sweets, or other ingredients.
5. "Fruit Juice" means the original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution or restoration of fruit juice concentrate, the liquid resulting from the restoration of water to dehydrated fruit juice, and any sweet beverage naturally or artificially flavored to resemble or replicate fruit juice.
6. "Pastries" means any mixed, baked, or fried products made primarily but not exclusively from any form of flour, sugar, artificial sweeteners, dairy, shortening, oil, butter, baking powder, nuts, fruits, eggs, jelly, and other filling ingredients.
7. "Powder or Base Product" means a solid or powdered mixture of basic ingredients used to make a sweetened beverage by mixing the base product with water or ice, simple syrup, fruits, vegetables, fruit juice or other liquid.
8. "Pudding and Gelatin Based Desserts" means any sweet preparation that is soft or gelatinous and which includes such ingredients as dairy, eggs, sugar or other natural or artificial sweeteners, collagen, cornstarch, and any flavoring.

9. "Snack Chips and Crisps" means crispy type snack foods that are often fried, baked, or toasted, such as potato chips, tortilla chips, pita chips, cheese puffs and crackers, and which are high in sodium and fat.
10. "Sweetened Beverages" means a sweet beverage, whether carbonated or noncarbonated, in any form sold for human consumption, including soda, flavored water, sports drinks, energy drinks, fountain drinks, iced coffee, iced tea, flavored drinks, drinks containing sugar, drinks containing Fruit Juice, and drinks containing Powder or Base Product.
11. "Sweets" means any preparation that has a high content of sugar (including all of its variants, *e.g.*, cane sugar, fructose, corn syrup, etc.), sometimes in combination with flour, milk, butter, shortening, eggs, dried fruits, nuts, etc., including Candy, Frozen Desserts, Pastries, Pudding and Gelatin Based Deserts, Baked and Fried Goods, and like products.

#### **SECTION 8-406      Tax Imposed**

There is hereby levied a tax on the gross receipts of a Person derived from the sale of Junk Food within the boundaries of the Kayenta Township (the "Kayenta Junk Food Tax").

#### **SECTION 8-407      Rate of Tax**

The rate of the Kayenta Junk Food Tax is two percent (2%) of the gross receipts of a Person derived from the sale of Junk Food within the boundaries of the Kayenta Township.

#### **SECTION 8-408      Legal Incidence of Tax; Responsibility for Payment**

- A. The legal incidence of the Kayenta Junk Food Tax is on the Person deriving gross receipts from the sale of Junk Food within the boundaries of the Kayenta Township. Such Person is also the Taxpayer responsible for collection and payment of the Kayenta Junk Food Tax to the Kayenta Township. The Taxpayer is neither required nor prohibited from passing through the Kayenta Junk Food Tax to the purchaser of the Junk Food provided it is collected by the Taxpayer at the time of purchase.
- B. The Kayenta Junk Food Tax imposed by this Subchapter is due and payable to the Township monthly, based on monthly receipts. Each Taxpayer shall, on or before the last day of the month next succeeding each reporting period, file with the Township a return for the preceding reporting period. The return shall be accompanied by a remittance of the amount of Kayenta Junk Food Tax assessed against the Taxpayer pursuant to this Subchapter and the tax computed in the return shall in all cases be based upon the sales made during the period, including both cash and charge sales.
- C. All Kayenta Junk Food Tax returns shall be in a form approved by the Kayenta Town Manager and contain the information prescribed by the Kayenta Town Manager and applicable law, including this Ordinance.



D. If any Taxpayer collects on the sales of Junk Food a tax imposed by this Subchapter in excess of the lawful amount due, he or she shall remit to the Township the full amount of the excess tax that was collected as well as the tax imposed by this Subchapter.

E. The Kayenta Junk Food Tax applies to mail order transactions where the Taxpayer is located within the Kayenta Township.

#### **SECTION 8-409      No Exemptions**

No gross receipts from the sale of Junk Food within the Kayenta Township are exempt from the tax imposed by this Subchapter.

#### **SECTION 8-410      Relationship to the Business Sales Tax**

The Kayenta Junk Food Sales Tax imposed by this Subchapter is in addition to the Kayenta Township Business Sales Tax, Subchapter Three of Chapter 8 of the Township's Ordinances. A Taxpayer does not have the option of paying either tax, but must pay both, if applicable.

#### **SECTION 8-411      Regulations**

The Kayenta Township Commission may adopt additional rules and regulations governing the administration of the Kayenta Junk Food Tax, as it deems appropriate. This Subchapter is effective on the Effective Date, below, whether or not the Commission adopts such rules and regulations.

#### **SECTION 8-412      Severability**

If any provision of this Subchapter, 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 of any such provision shall not affect other provisions or applications of this Subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this Subchapter are severable.

#### **SECTION 8-413      Effective Date**

This Subchapter shall take effect on October 1, 2017 (the "Effective Date"). The effective date of any subsequent amendment shall be stated in the adopting resolution.

#### **SECTION 8-414      Inconsistent Law Repealed**

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

**JUNK FOOD TAX REGULATIONS**  
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**11.101. TITLE**

This chapter is called the Junk Food Tax Regulations.

**11.102. AUTHORITY**

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

**11.103. SCOPE AND APPLICATION**

The regulations contained in this chapter apply to the Healthy Dine' Nation Act of 2014 ("Junk Food Tax").

**11.104. 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. "Junk food" means 'minimal-to-no nutritional value food' as defined by the Healthy Dine' Nation Act of 2014.

**11.105. RATE OF TAX**

A. Effective April 1, 2015, the rate shall be two percent (2%) of gross receipts. The 2% rate shall apply to all gross receipts received for junk food sold after April 1, 2015.

**11.106. SALE OF JUNK FOOD**

- A. The Junk Food Tax applies to the sale of junk food when the transfer of ownership and/or risk of loss occur within the Navajo Nation. The tax does not apply to sales of junk food when the sale takes place outside the Navajo Nation. This is true even when the junk food will be brought into or consumed on the Nation. The tax does apply to sales of junk food when the sale occurs within the Navajo Nation but the junk food will be taken or consumed outside the Nation.

Example 1: B purchases a candy bar in Gallup, New Mexico, which is outside the Navajo Nation. He pays for the candy bar at the Gallup location of the seller, and ownership of the candy bar transfers to him at that point. The candy bar is then taken to his home in Window Rock, Arizona, which is within the Navajo Nation. The sale occurred outside the Navajo Nation, so the Junk Food Tax does not apply to the sale of the candy bar.

Example 2: C negotiates the purchase of an order of junk food in Gallup whereby the junk food will be delivered to her office in Window Rock, Arizona, and she will make the payment for the junk food at the time and place of delivery, with ownership transferring to her at that point. The Junk Food 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 junk food at D that will be consumed at E's home in Gallup, New Mexico, outside the Navajo Nation, and E picks up the junk food at the time of purchase; the transfer of ownership occurs at the store, within the Navajo Nation. The Junk Food 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 junk food 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 Junk Food Tax does apply to the gross receipts from

the sale of junk food 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 junk food to a buyer who is located within the Navajo Nation, the sale should be classified on the Form 1100 as H – Other, not A – Retail. Classification A on the Form 1100 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 Navajo 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 junk food. If the sale is made to the final consumer, then the sale is a retail sale and subject to the tax.

#### **11.107. CONSIGNMENT SALES**

- A. In consignment sales, a consignor turns over junk food item(s) to a consignee, who is then responsible to act as the agent for the consignor in the retail sale of the junk food item(s). 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 junk food good is sold at retail. The consignor/owner pays the consignee a fee for being responsible for making the retail sale.
- B. The Junk Food 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, and the Sales Tax applies to the fee received by the consignee for the service of selling the junk food.

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

#### **11.108. 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.

#### **11.109. SALES BY AND TO NON-PROFIT CORPORATIONS**

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

**11.110. MAIL ORDER; THIRD-PARTY COMMERCIAL CARRIER**

- A. The Junk Food 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 Junk Food 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, but not limited to, United Parcel Service or Fed Ex.

**11.111. RELATIONSHIP WITH TOWNSHIP AND CHAPTER TAXES**

For purposes of filing and reporting under this Junk Food Tax, when a taxpayer pays Junk Food 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 1100.

Example: ABC Company has three stores: one in Kayenta, one in To'Nanees'Dizi, and one in Chinle. ABC pays the Junk Food Tax on its sales at the Kayenta location and the To'Nanees'Dizi Junk Food Tax on its sales at the To'Nanees Dizi location. When ABC is reporting and paying the Navajo Junk Food Tax on Form 1100, 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.

**11.112. PASS-THROUGH OF JUNK FOOD TAX TO BUYER**

The legal incidence of the Junk Food Tax is on the seller of the junk food, and the seller is responsible for filing the tax returns and making the payment. However, there is nothing in the Junk Food Tax that prohibits the seller from passing the tax along to the buyer; the Junk Food 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.

**11.113. RELATIONSHIP BETWEEN SALES TAX AND JUNK FOOD TAX**

- A. Gross receipts for the sale of junk food items are subject both to the Sales Tax and the Junk Food Tax.
- B. If the Sales Tax and the Junk Food 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 Junk Food Tax for the sale of junk food items. The seller does not have the option of deciding which tax to pay.

Example: G engages in retail of junk food within the Navajo Nation. This activity constitutes a retail sale, so the Sales Tax applies, and the Junk Food Tax also applies, as the retail activity includes the sale of junk food items. G is required to pay the Sales Tax on his gross receipts, and shall also report and pay those receipts for the sale of junk food items.

- C. The terms and applications of the Sales Tax will be used to interpret any ambiguities which may arise under administration of the Junk Food Tax.



THE  
NAVAJO  
NATION

RUSSELL BEGAYE  
PRESIDENT

OFFICE OF THE NAVAJO TAX COMMISSION  
Post Office Box 1903 • Window Rock, Navajo Nation (Arizona) 86515-1903  
(928) 871-6681 • (928) 871-7608 FAX

JONATHAN NEZ  
VICE - PRESIDENT

January 12, 2018

The Kayenta Township Commission  
Attn: Gabriel Yazzie, Township Manager  
P.O. Box 1490  
Kayenta, Arizona 86033

RE: Navajo Nation Junk Food Tax Regulations

Dear Mr. Yazzie;

First of all thank you for stopping by our office on Thursday, January 11, 2018. Pursuant to our meeting and the letter provided dated January 11, 2018 a request was made for verification and a written statement from the Office of the Navajo Tax Commission (ONTC) regarding the Navajo Nation Junk Food Tax Regulations at Section 11.111.

Apparently, ONTC posted on the website the incorrect version of the Junk Food Tax Regulation different than what was approved by the Navajo Tax Commission (NTC). During our meeting I provided you a copy of NTC resolution #TAX-15-224 that confirmed the correct language in Section 11.111 that Kayenta Township was utilizing in implementing the Junk Food Tax. This letter is to confirm that your instruction to Kayenta Township taxpayers regarding the implementation of the Junk Food Tax is correct.

ONTC will update the correct version of the Junk Food Tax Regulation on the website. Should there be any questions, I can be contacted at 928/871-6992 or [mashley@navajo-nsn.gov](mailto:mashley@navajo-nsn.gov).

Sincerely,

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

Cc: Larieta Tso, Senior Tax Compliance Officer, ONTC (via email)  
Laura Jackson, Tax Compliance Officer, ONTC (via email)

**RESOLUTION OF THE NAVAJO TAX COMMISSION**  
**APPROVING THE JUNK FOOD TAX REGULATIONS FOR IMPLEMENTATION OF**  
**THE HEALTHY DINE NATION ACT OF 2014**

**WHEREAS:**


1. Pursuant to 2 N.N.C. §3353 (A)(3), the Navajo Tax Commission has the authority to adopt rules and regulations implementing Navajo taxes; and
2. Pursuant to 2 N.N.C. §3353(A)(1), the Navajo Tax Commission has the authority to develop an appropriate, comprehensive system of taxation for the Navajo Nation; and
3. The Navajo Nation, as recognized by the Treaties of 1849 and 1868 and Kerr-McGee Corp. v. Navajo Tribe of Indians, 471 U.S. 195 (1985), possesses the inherent authority to tax activities occurring within its jurisdictional boundaries; and
4. These Regulations are designed to address certain issues raised by taxpayers regarding the implementation and enforcement of the Healthy Dine Nation Act of 2014; and
5. Adoption of these Regulations will complement the implementation and enforcement of all the Healthy Dine Nation Act of 2014.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Navajo Tax Commission approves the Junk Food Tax Regulations, attached as Exhibit A to this resolution.
2. The Navajo Tax Commission hereby authorizes the Executive Director of the Office of the Navajo Tax Commission to make technical changes to these regulations before they go into effect.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Tax Commission at a duly called meeting in St. Michael, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 3 in favor and 0 opposed, with 0 abstaining, this 14<sup>th</sup> day of January, 2015.

  
 Chairperson, Navajo Tax Commission

Motioned: Mark Graham  
 Seconded: Wilbur Nelson

## **JUNK FOOD TAX REGULATIONS**

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**11.101. TITLE**

This chapter is called the Junk Food Tax Regulations.

**11.102. AUTHORITY**

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

**11.103. SCOPE AND APPLICATION**

The regulations contained in this chapter apply to the Healthy Dine' Nation Act of 2014 ("Junk Food Tax").

**11.104. 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. "Junk food" means 'minimal-to-no nutritional value food" as defined by the Healthy Dine' Nation Act of 2014.

**11.105. RATE OF TAX**

A. Effective April 1, 2015, the rate shall be two percent (2%) of gross receipts. The 2% rate shall apply to all gross receipts received for junk food sold after April 1, 2015.

**11.106. SALE OF JUNK FOOD**

A. The Junk Food Tax applies to the sale of junk food when the transfer of ownership and/or risk of loss occur within the Navajo Nation. The tax does not apply to sales of junk food when the sale takes place outside the Navajo Nation. This is true even when the junk food will be brought into or consumed on the Nation. The tax does apply to sales of junk food when the sale occurs within the Navajo Nation but the junk food will be taken or consumed outside the Nation.

Example 1: B purchases a candy bar in Gallup, New Mexico, which is outside the Navajo Nation. He pays for the candy bar at the Gallup location of the seller, and ownership of the candy bar transfers to him at that point. The candy bar is then taken to his home in Window Rock, Arizona, which is within the Navajo Nation. The sale occurred outside the Navajo Nation, so the Junk Food Tax does not apply to the sale of the candy bar.

Example 2: C negotiates the purchase of an order of junk food in Gallup whereby the junk food will be delivered to her office in Window Rock, Arizona, and she will make the payment for the junk food at the time and place of delivery, with ownership transferring to her at that point. The Junk Food 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 junk food at D that will be consumed at E's home in Gallup, New Mexico, outside the Navajo Nation, and E picks up the junk food at the time of purchase; the transfer of ownership occurs at the store, within the Navajo Nation. The Junk Food 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 junk food 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 Junk Food Tax does apply to the gross receipts from

the sale of junk food 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 junk food to a buyer who is located within the Navajo Nation, the sale should be classified on the Form 1100 as H – Other, not A – Retail. Classification A on the Form 1100 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 Navajo 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 junk food. If the sale is made to the final consumer, then the sale is a retail sale and subject to the tax.

#### **11.107. CONSIGNMENT SALES**

A. In consignment sales, a consignor turns over junk food item(s) to a consignee, who is then responsible to act as the agent for the consignor in the retail sale of the junk food item(s). 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 junk food good is sold at retail. The consignor/owner pays the consignee a fee for being responsible for making the retail sale.

B. The Junk Food 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, and the Sales Tax applies to the fee received by the consignee for the service of selling the junk food.

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

#### **11.108. 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.

#### **11.109. SALES BY AND TO NON-PROFIT CORPORATIONS**

A. Sales by non-profits: In order to claim the exemption provided for in Sales Tax §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 Junk Food Tax.

B. Sales to non-profits: Because the legal incidence of the Navajo Junk Food Tax is on the seller, the identity of the buyer is irrelevant in determining whether or not the Junk Food 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.

**11.110. MAIL ORDER; THIRD-PARTY COMMERCIAL CARRIER**

- A. The Junk Food 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 Junk Food 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, but not limited to, United Parcel Service or Fed Ex.

**11.111. RELATIONSHIP WITH TOWNSHIP AND CHAPTER TAXES**

For purposes of filing and reporting under this Junk Food Tax, when a taxpayer pays Junk Food 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 1100.

Example: ABC Company has three stores: one in Kayenta, one in To’Nanees’Dizi, and one in Chinle. ABC pays the Junk Food Tax on its sales at the Kayenta location and the To’Nanees’Dizi Junk Food Tax on its sales at the To’Nanees Dizi location. When ABC is reporting and paying the Navajo Junk Food Tax on Form 1100, 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.

**11.112. PASS-THROUGH OF JUNK FOOD TAX TO BUYER**

The legal incidence of the Junk Food Tax is on the seller of the junk food, and the seller is responsible for filing the tax returns and making the payment. However, there is nothing in the Junk Food Tax that prohibits the seller from passing the tax along to the buyer; the Junk Food 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.

**11.113. RELATIONSHIP BETWEEN SALES TAX AND JUNK FOOD TAX**

- A. Gross receipts for the sale of junk food items are subject both to the Sales Tax and the Junk Food Tax.

- B. If the Sales Tax and the Junk Food 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 Junk Food Tax for the sale of junk food items. The seller does not have the option of deciding which tax to pay.

Example: G engages in retail of junk food within the Navajo Nation. This activity constitutes a retail sale, so the Sales Tax applies, and the Junk Food Tax also applies, as the retail activity includes the sale of junk food items. G is required to pay the Sales Tax on his gross receipts, and shall also report and pay those receipts for the sale of junk food items.

- C. The terms and applications of the Sales Tax will be used to interpret any ambiguities which may arise under administration of the Junk Food Tax.