

LEGISLATIVE SUMMARY SHEET

Tracking No. 0111-21

DATE: July 9, 2021

TITLE OF RESOLUTION: AN ACT RELATING TO THE RESOURCES AND DEVELOPMENT, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING THE NAVAJO NATION SALES TAX AT 24 N.N.C. §601-§624


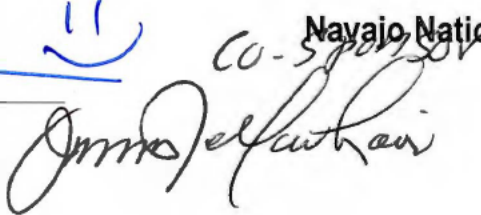
PURPOSE: The purpose of this legislation is to approve amendments to the Navajo Nation Sales Tax, as recommended by the Navajo Tax Commission.

5-DAY BILL HOLD PERIOD VRidhore
Website Posting Time/Date July 9, 2021 4:27pm
Posting End Date: July 14, 2021
Eligible for Action: July 15, 2021

Resources & Development Committee
Thence
Law & Order Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Third Year, 2021

Introduced by:


(Prime Sponsor)  Co-Sponsor

Tracking No. 0111-21

AN ACT
RELATING TO THE RESOURCES AND DEVELOPMENT,
LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI'
COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING
THE NAVAJO NATION SALES TAX AT 24 N.N.C. §601-§624

BE IT ENACTED:

SECTION 1. AUTHORITY

- A. The Resources and Development Committee is a standing committee of the Navajo Nation Council with the authority to review and make recommendations to the Navajo Nation Council regarding “taxation proposals affecting business or commercial activities, after consultation with the Navajo Tax Commission.” 2 N.N.C. §501(B)(4)(d).
- B. The Law and Order Committee is a standing committee of the Navajo Nation Council empowered to review and make recommendations to the Navajo Nation Council regarding any proposed amendments to the Navajo Nation Code. 2 N.N.C. §601(B)(14).
- C. The Budget and Finance Committee is a standing committee of the Navajo Nation Council authorized to provide oversight regarding the Navajo Nation’s budgeting, finance, taxes, and other related matters. 2 N.N.C. §300(C). The Budget and Finance Committee is also empowered to recommend to the Navajo Nation Council “resolutions designed to strengthen the fiscal and financial position of the Navajo Nation.” 2 N.N.C. §300(C)(3).

1 D. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council; as
2 such, the Committee reviews all proposed legislation requiring final action by the Navajo
3 Nation Council. 2 N.N.C. §164(A)(9).

4 E. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A)
5 As such, the Council must review, and give final approval of, all amendments to Navajo
6 Nation laws. 2 N.N.C. §164(A).

7 8 **SECTION 2. FINDINGS**

9 A. The Navajo Tax Commission was established by the Navajo Nation Council to review
10 and study all sources of wealth and income within the Navajo Nation, in order to find
11 possible Navajo Nation government revenues from the taxation of those sources. 2 N.N.C.
12 §3351 and §3353(A)(1).

13 B. The Navajo Nation Council enacted the Sales Tax in Resolution No. CO-84-01
14 (subsequently amended by CJA-03-07, CO-38-09, CAP-20-14, CO-62-17, CJA-07-18,
15 CO-74-18, and most recently amended by CJN-48-20). The Sales Tax is codified at 24
16 N.N.C. §601-§624.

17 C. As explained by the Executive Director of the Office of the Navajo Tax Commission, the
18 Commission has determined that, consistent with the Commission's statutory purpose
19 under Title 2 of the Navajo Nation Code, certain amendments to the Sales Tax are
20 necessary and appropriate at this time. **Exhibit A.**

21 D. Specifically, in Resolution No. TAX-20-238 (**Exhibit B** attached hereto) the Navajo Tax
22 Commission recommends the following substantive changes to the Navajo Nation's Sales
23 Tax (as shown in the **Sub-Exhibit B-1** attached hereto):

- 24 1. an increase of the current maximum Sales Tax rate to 10% (an increase from a maximum
25 rate of 6%);
- 26 2. the insertion of new definitions of "Agricultural Products" and "Agricultural Producers"
27 and "Traditional" for the purpose of exempting the sales of Agricultural Products by
28 Agricultural Producers who are engaged in Traditional Navajo agricultural, farming,
29 and livestock activities conducted within the Navajo Nation (but this exemption would
30 not apply to commercial Agricultural Producers);

3. removing from the definition of “Gross Receipts” the market value of employee benefits such as free or reduced cost meals, thereby exempting these from the Sales Tax;
 4. removing from the definition of “Gross Receipts” those dollar amounts received as reimbursements for federal, state, or Navajo Nation taxes so long as proof is provided that the appropriate tax was already collected on the original expenditure, thereby eliminating double taxation of reimbursements;
 5. including in the Sales Tax compressed or liquefied natural gas, kerosene, liquefied petroleum gas, butane, propane, non-fuel stove oil, and aircraft fuel;
 6. narrowing of the definition of “Sale for Resale” in order to tax the selling of services, the sale of items for consumption by the buyer, and the sale of items that will be further processed, manufactured, or used for further commercial or industrial purposes;
 7. related to item no. 7 above, the Commission recommends the insertion of a new definition of “Upstream Seller” for the purpose of clarifying what type of “Sale for Resale” is not taxed; *i.e.*, sales by Upstream Sellers shall not be taxed so long as certain requirements are met, as set forth in the revised definition of “Sale for Resale;”
 8. making the collection of gross receipts from the sale of tobacco products subject to the Sales Tax;
 9. narrowing the tax exemption for sales from coin-operated vending machines so as to exclude car washes and laundromats, thereby taxing those businesses;
 10. clarifying that persons may take a credit in the amount of any Sales Taxes paid to the Kayenta Township and the To’Nanees’Dizi’/Tuba City Chapter;
 11. requiring Sale Tax filers to report their gross receipts on a cash basis rather than using an accrual basis;
 12. providing that no Sales Tax return need be filed by those who are exempt, as determined by ONTC, because the Taxpayer has paid taxes to the Kayenta Township or the To’Nanees’Dizi’/Tuba City Chapter for sales located within the territorial boundaries of the Navajo Nation;
 13. changing the time period for preserving Sales Tax records from 4 years to 7 years.
- E. Notably, the proposed amendment to 24 N.N.C. §605(A) does not amend the Sales Tax as it applies to gross receipts collected from the sales of fresh fruits, fresh vegetables, filtered

bottled water, and nuts, nut butters, or seeds. The amendment merely moves the exemption for these sales to the appropriate section pertaining to exemptions, at 24 N.N.C. §609(C)(18).

F. The Navajo Nation Council has reviewed the proposed changes to the Sales Tax, as described in Sections 2(D)1-13 above, and finds that such amendments are in the best interest of the Navajo Nation because such changes will provide for the collection of additional needed revenue for the Navajo Nation to pay for governmental services.

SECTION 3. AMENDING THE SALES TAX (24 N.N.C. §601-§624)

The Navajo Nation Council hereby approves and adopts the amendments to the Sales Tax (at 24 N.N.C. §601-§624) as recommended by the Navajo Tax Commission in Resolution No. TAX-20-238 (and as shown in the redlined document attached hereto as **Sub-Exhibit B-1**) as follows:

Title 24 Navajo Nation Code Chapter 6 Sales Tax

§601. SHORT TITLE

The tax imposed by this Chapter shall be called the “Sales Tax.”

§602. PURPOSE

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

§603. 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 for a period, and then multiplying those gross receipts by the applicable tax rate.

1 **§604. LEGAL INCIDENCE AND RESPONSIBILITY FOR PAYMENT**

2 The person liable for the payment of the tax imposed by this Chapter is the person receiving the
3 gross receipts from a sale.

4
5 **§605. RATE OF TAX**

6 A. The tax imposed by this Chapter is imposed at a rate of not less than two percent (2%), nor
7 more than ~~six~~ ten percent (~~6~~10%), which shall be specifically established by regulations
8 promulgated by the Navajo Tax Commission. ~~This tax shall not be imposed on the purchase~~
9 ~~of fresh fruits, fresh vegetables and filtered bottled water including nuts, nut butters, and seeds.~~
10 Until another rate is established, the rate shall be ~~five~~ six percent (~~5~~6%) of the applicable gross
11 receipts from all retail sales (~~.05~~06 x applicable gross receipts).

12 B. A majority of the registered voters of any governance-certified chapter may enact an
13 ordinance imposing an additional tax rate in addition to the rate approved by the Navajo Tax
14 Commission in accordance with paragraph A, above. This additional rate may be from one-
15 quarter of one percent (.25%) to four percent (4%) and shall be set forth in the ordinance.

16
17 **§606. ADMINISTRATION**

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

19
20 **§607. DEFINITIONS**

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

23 A. “Agricultural Producers” means Persons who are farmers, ranchers, growers, and producers,
24 on agricultural lands within the Navajo Nation, who grow, harvest, raise, or prepare for
25 market, and sell their own Agricultural Products within the Navajo Nation.

26 B. “Agricultural Products” means crops such as vegetables, fruits, grains, grasses, roots, and
27 legumes, that are grown from cultivating the soil and harvested for use as food for humans
28 and animals, as fiber for clothing and other products, or for production of fuel; livestock such
29 as cattle, sheep, goats, buffalo, hogs, and poultry, raised for purposes of production of meat,
30 dairy, eggs, and other food products for human consumption, or for production of wool, skins,

and pelts for clothing and other purposes; livestock such as horses and mules for work on a ranch or farm; farm-raised fish; bees and honey; trees grown for production of fruit, lumber, fuel, and fiber; flowers cultivated for sale; and other similar natural plant or animal products.

AC. “Consideration” means any money or other pecuniary benefit, goods, personal or real property, services, or any combination thereof, which accrues as a right, profit, advantage, or benefit to a person, or which reflects a payment, detriment, loss, or responsibility of a person.

BD. “Construction activity” means any building, altering, repairing, installing, or demolishing in the ordinary course of business, whether a project is completed or not, any:

1. Road, highway, bridge, parking area, fence, livestock guard, gate, or related structure;
2. Building, stadium, or other structure;
3. Airport, railway, or similar transportation facility;
4. Park, trail, athletic field, golf course, or similar facility;
5. Dam, reservoir, canal, ditch, culvert, or similar facility;
6. Sewerage or water treatment facility, power plant, pumping station, natural gas compressing station, gas processing plant and gathering lines, coal gasification plant, refinery, distillery, blending, or similar facility;
7. Sewerage, water, coal, coal slurry, gas, or other pipeline;
8. Transmission line;
9. Radio, television, microwave, telephone, or other similar tower;
10. Water, oil, gasoline, fuel or other storage tank;
11. Shaft, tunnel, or other mining appurtenance;
12. Microwave station, or similar facility;
13. Leveling, clearing, or other preparation of land;
14. Excavating of earth;
15. Drilling of wells of any type, including seismograph shot holes or core drilling; or
16. Any similar work or activity.

EE. “Employee” means a person in the service of another person under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.

1 DF. “Enterprise” means any non-corporate business entity created by action of the Navajo Nation
2 Council.

3 EG. “Fair market value” means the amount of consideration at which personal or real property or
4 services would change hands via an arms-length transaction between a willing buyer and a
5 willing seller, or a willing lessor and a willing lessee, neither of whom is under any
6 compulsion to act.

7 “Fair market value” is to be determined on the basis of consideration in comparable sales,
8 leasing, or rental transactions. If such information is not available, the Office of the Navajo
9 Tax Commission may estimate the fair market value of the subject of a transaction according
10 to procedures established by regulations.

11 FH. “Fresh fruits and fresh vegetables” means produce in fresh form generally considered as
12 perishable fruits and vegetables, whether or not packed in ice or held in common or cold
13 storage.

14 GI. “General contract” means any legal duty, obligation, or responsibility, express or implied,
15 unilateral or bilateral, written or unwritten, which is entered into by a general contractor.

16 HJ. “General contractor” means a person primarily responsible for the performance of a
17 construction project pursuant to a contract.

18 A “General contractor” may enter into subcontracts, but remains primarily responsible for the
19 management, planning, supervision, coordination, and performance of the contract.

20 IK. “Gross receipts” means the total amount of money, credit, or any other pecuniary benefit or
21 advantage, plus the fair market value of any other consideration, which is actually received
22 during any period by any person from the sale or leasing of real or personal property of any
23 kind, the sale of services of any kind, and any other productive activity of any kind, whether
24 for profit or not, conducted wholly or partially within the Navajo Nation. “Gross receipts”
25 does not include the salary, ~~or wages, or the market value of employee benefits such as free~~
26 ~~or reduced cost meals,~~ of an individual engaged as an employee.

27 “Gross receipts” includes those amounts received for any and all personal or real property
28 which is an integral, but not necessarily a significant or primary, component of the service(s)
29 rendered, regardless of the date, time, manner, and location of sale, delivery, or use of such
30 personal or real property.

1 “Gross receipts” includes those amounts received for any and all services which are an
2 integral, but not necessarily a significant or primary, component of the sale or delivery of
3 personal or real property, such as those amounts received as payment or reimbursement for
4 costs of putting personal or real property into a finished and marketable form, payment for
5 delivery and set-up, and payment for warranty or service contracts, regardless of the date,
6 time, manner, or location of performance of such services(s).

7 “Gross receipts” does not include amounts received as reimbursement for federal, state, or
8 Navajo Nation taxes when the seller/taxpayer collects tax from buyer and taxpayer/seller
9 provides proof it has paid the tax to the above-named taxing jurisdictions.

10 “Gross receipts” are recognized when seller receives the payment rather than when goods are
11 delivered or services are received.

12 JL. “Manufacturing activity” means combining or processing components or materials into a
13 finished product, whether manually or mechanically, for the purpose of resale in the ordinary
14 course of business, but does not include construction activity.

15 JM. “Nut Butters” means ground nuts blended to make a paste or spread.

16 LN. “Nuts” means a fruit consisting of a hard or tough shell around an edible kernel.

17 MO. “Navajo Nation” means all areas within the territorial jurisdiction of the Navajo Nation
18 government.

19 NP. “Performance” means the partial or complete fulfillment or accomplishment of a promise,
20 contract, or other obligation according to the terms of such promise or contract.

21 OQ. “Period” means a calendar quarter.

22 PR. “Personal property” means any tangible property which may be seen, touched, weighed or
23 measured, or is in any manner perceptible to the human senses, including, but not limited to,
24 electricity, compressed or liquefied natural gas, kerosene, liquefied petroleum gas, butane,
25 propane, non-fuel stove oil, fuel products used for the propulsion of aircraft, goods or
26 merchandise of any kind, goods purchased for consumption or other use, goods purchased for
27 incorporation into other personal or real property, and goods purchased for use in the
28 performance of any service, whether or not such goods are consumable, movable, separable,
29 affixed to, or incorporated into, other personal or real property, and whether or not such goods
30 retain their original character upon final sale.

1 “Personal property” also means any intangible property which cannot be physically perceived
2 by the human senses, such as patents, trademarks, copyrights, franchises, licenses, knowledge,
3 information, ideas, advice, and other intangible items of value or legal rights of any kind.

4 QS. “Sale” means any transaction, including a lease or rental, for consideration of any kind that
5 results in the transfer of ownership and/or possession, delivery, use, or enjoyment of personal
6 or real property, or the performance of any service.

7 A “Sale” includes circumstances where the title to personal or real property is retained as
8 security for payment, and includes circumstances where no actual physical transfer of
9 personal or real property or services occurs.

10 RT. “Sale for resale” means a sales transaction of tangible personal property made to a buyer for
11 purposes of being resold within the Navajo Nation by the buyer in the ordinary course of
12 business any further sale, processing, manufacturing, or other commercial or industrial
13 purposes, as distinguished from a retail sale.

14 “Sale for resale” does not include the sale of services.

15 “Sale for resale” does not include the sale of tangible personal property for consumption by
16 the buyer, or to a buyer who is the end-use consumer or to the agent of the end-use consumer.

17 “Sale for resale” does not include sale of tangible personal property for purposes of further
18 processing, manufacturing, or other commercial or industrial purposes.

19 A transaction by an upstream seller shall only be considered a “sale for resale” if all of the
20 following requirements are met: (1) the last seller for the last sale occurring within the Navajo
21 Nation, or another seller in the supply chain, has paid the applicable Sales Tax to the Navajo
22 Nation on a sale of the same tangible personal property; (2) the seller who paid the Sales Tax
23 has obtained from the Office of the Navajo Tax Commission a valid Navajo Tax Exemption
24 Certificate, and has provided the Certificate to the upstream seller; (3) the upstream seller filed
25 a Return with the Office of the Navajo Tax Commission and attached a copy of the valid
26 Navajo Tax Exemption Certificate pertaining to the sale in question; and (4) compliance with
27 other requirements related to “sale for resale” set forth in the Sales Tax Regulations.

28 RU. “Seeds” means the grains or ripened ovules of fruits, vegetables, or plants such as sunflower
29 seeds, flax seeds, pumpkin seeds, and mixed nuts without sugared candies.

1 ~~F~~V. "Services" means manual, mechanical, or intellectual labor performed, and includes other
2 business activity that does not have physical characteristics.

3 ~~U~~W. "Subcontract" means any legal duty, obligation, or responsibility, express ~~or implied~~,
4 unilateral or bilateral, written ~~or unwritten~~ agreement, between a general contractor and a
5 subcontractor.

6 ~~V~~X. "Subcontractor" means a ~~P~~person who takes from the general contractor a specific part of
7 the work undertaken by the general contractor.

8 Y. "Traditional" means Navajo culture, laws, philosophies, values, customs, practices, and
9 methods, that have been passed down from one generation to the next either orally or in
10 writing.

11 Z. "Upstream Seller" means a Person who sells tangible personal property to a buyer other than
12 the end-use consumer, where the sale occurred within the Navajo Nation, and such buyer later
13 resells the same property within the Navajo Nation.

14 ~~W~~AA. "Water" means drinking water that has no added sugar or other artificial sweeteners. It
15 includes artisan, fluoridated, mineral, purified, sparkling, spring, or sterile (distilled) water.
16

17 **§608. NAVAJO NATION GOVERNMENT**

18 A. Sales by corporations owned by the Navajo Nation government or any political sub-division
19 thereof shall be fully subject to the tax imposed by this Chapter.

20 B. Sales by the government of the Navajo Nation, or political subdivisions or enterprises thereof,
21 shall be subject to the tax imposed by this Chapter according to the following schedule:

22 1. For all periods during calendar years 2001 and 2002, the Navajo Nation government,
23 political subdivisions, and enterprises shall not be subject to the tax;

24 2. For all periods during calendar year 2003, the Navajo Nation government, political
25 subdivisions, and enterprises shall be subject to the tax at a rate equal to twenty- five percent
26 (25%) of the rate imposed under § 605 of this Chapter;

27 3. For all periods during calendar year 2004, the Navajo Nation government, political
28 subdivisions, and enterprises shall be subject to the tax at a rate equal to fifty percent (50%)
29 of the rate imposed under § 605 of this Chapter;

30 4. For all periods during calendar year 2005, the Navajo Nation government, political

subdivisions, and enterprises shall be subject to the tax at a rate equal to seventy- five percent (75%) of the rate imposed under § 605 of this Chapter;

5. For all periods during calendar year 2006 and all periods thereafter, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to one hundred percent (100%) of the rate imposed under § 605 of this Chapter.

C. In cases where a person is partially owned by the Navajo Nation government or any of its political subdivisions or enterprises, gross receipts shall be prorated if necessary.

§609. EXEMPTIONS AND EXCLUSIONS

A. Nothing in this Chapter shall be construed as imposing a tax on the gross receipts of a subcontractor, provided that:

1. The general contractor with whom the subcontractor has contracted has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter by signing and issuing a certificate of exemption to the subcontractor; and,
2. The subcontractor must obtain from the general contractor a certificate of exemption issued to the general contractor by the Office of the Navajo Tax Commission. This certificate must be signed by the general contractor, and must indicate that the general contractor has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter.
3. The Commission may by form or regulation provide for the proper issuance and filing of the certificate of exemption.

B. In calculating applicable gross receipts, a person may exclude those gross receipts on which any of the following Navajo Nation taxes have been paid:

1. Navajo Nation Oil and Gas Severance Tax; or
- ~~2. Navajo Tobacco Products Tax; or~~
- ~~3.~~ Navajo Nation Fuel Excise Tax.

C. The tax imposed by this Chapter does not apply to gross receipts generated directly by the following:

1. Sales for resale;
2. Sales of Agricultural Products related to by Agricultural Producers engaged in Traditional

1 Navajo agricultural, farming, and livestock activities conducted within the Navajo
2 Nation. This exemption shall not apply to sales by commercial Agricultural Producers;

- 3 3. Sales, other than sales from an unrelated trade or business as defined in §§ 511 – 513 of
4 the Internal Revenue Code, by any person operating exclusively for non- profit or
5 charitable purposes, and recognized as such pursuant to § 501(C)(3) and 501(C)(19) of the
6 United States Internal Revenue Code at the time of sale;
- 7 4. Sales by facilities engaged in childcare, foster care or adoption placement, or battered
8 families and homeless shelters;
- 9 5. Sales of stocks, private or government-issued bonds, mutual funds, or other investments,
10 including income received as dividends or interest;
- 11 6. Sales by itinerant salespersons;
- 12 7. Occasional sales by persons who are not regularly engaged in the business of selling
13 personal or real property or services;
- 14 8. Sales by educational institutions, including primary and secondary schools, colleges,
15 vocational, and job training programs;
- 16 9. Sales by hospitals and health-care organizations or facilities, such as nursing care
17 institutions, residential care and mental health facilities, senior citizen care facilities or
18 retirement homes, kidney dialysis facilities and blood banks, or other facilities which
19 provide medical care and services;
- 20 10. Sales from coin-operated vending machines. This exemption shall not apply to coin-
21 operated car washes and laundromats of any type;
- 22 11. Sales related to traditional Native American ceremonies or services;
- 23 12. Sales of prescription medicines, prosthetic devices, or other medical devices, including
24 medical oxygen, monitoring devices, dentures, hearing aids, crutches, insulin syringes,
25 blood sugar monitoring strips or devices, prescription eyeglasses and contact lenses, or any
26 durable medical equipment primarily and customarily used for medical purposes and not
27 useful in the absence of illness, injury, or other medical condition;
- 28 13. Sales related to funerals and human burials;
- 29 14. Sales paid for by coupons issued by the United States Department of Agriculture under the
30 Food Stamp Act of 1977 (P.L. 95-113);

1 15. Sales paid for by vouchers issued under § 17 of the Child Nutrition Act (P.L. 95- 627 and
2 P.L. 99-669);

3 16. Sales of newspapers or other daily publications; or

4 17. Sales of mobile homes, motor homes, motor vehicles, tractors, and hauling trailers for
5 private use, possession, or enjoyment, provided that such items are not resold or used in
6 any business activity or service.

7 18. Sales of fresh fruits, fresh vegetables, filtered bottled water, nuts, nut butters, and seeds.

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

10 E. Through December 31, 2005, a person may exclude from gross receipts any amount received
11 from a transaction on which the Hotel Occupancy Tax has been paid.

12
13 **§610. CREDITS**

14 A person may take a credit against the tax imposed by this Chapter for taxes paid pursuant to any
15 nondiscriminatory ~~excise sales or gross receipts~~ tax imposed by Kayenta Township and To'
16 Nances' Dizi' / Tuba City Chapter ~~any duly established township or local government subunit,~~
17 provided that revenues from such excise tax are utilized to provide essential governmental
18 services.

19
20 **§611. RESERVED**

21
22 **§612. FILING OF RETURN**

23 A. Each person must file a return indicating all sales from applicable gross receipts, which shall
24 be reported on a cash basis as opposed to on an accrual basis, and the tax due under this
25 Chapter for each period by the fifteenth day of the second month after the end of each calendar
26 quarter. Returns are due on May 15, August 15, November 15, and February 15 of each
27 calendar year.

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

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

4 D. No return need be filed by any person who is claiming a credit under § 610, provided that the
5 Office of the Navajo Tax Commission may require such person to file the information
6 necessary to establish its eligibility for the credit.

7 E. In the case of the exemption provided for in § 609(A), the filing by a person of a proper
8 Ceertificate of Eexemption with the Office of the Navajo Tax Commission shall constitute a
9 claim for exemption.

11 **§613. PAYMENT OF TAX**

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

16 **§614. RECORDKEEPING**

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

20 B. Records required to be kept must be preserved for seven (7)~~four~~ years beyond the end of the
21 period to which the records relate.

23 **§615. RESERVED**

24 **§616. RESERVED**

25 **§617. RESERVED**

26 **§618. RESERVED**

27 **§619. RESERVED**

29 **§620. ALLOCATION OF REVENUE**

30 After allocation to permanent or special revenue funds as required by Navajo Nation law, and

1 allocation to the Tax Administration Suspense Fund as required by the fiscal policy adopted by
2 the Navajo Tax Commission for such Fund, the net revenue from this Chapter shall be disbursed
3 as follows:

4 A. To the extent that any amount is collected pursuant to Section 605(B) above, that amount shall
5 be transmitted by the Office of the Navajo Tax Commission to the chapter in a timely manner
6 to be expended in accordance with the ordinance referred to in Section 605(B), above.

7 B. Except as otherwise provided in subsections (C) or (D), fifty percent (50%) of the revenue
8 collected shall be deposited into the General Fund of the Navajo Nation, sixteen point six,
9 six... percent (16.6666%) of the revenue collected shall be deposited into the Judicial/Public
10 Safety Facilities Fund, eight point three, three...percent (8.3333%) of the revenue collected
11 shall be deposited to the Scholarship Fund, and eight point three, three...percent (8.3333%)
12 of the revenue shall be deposited to the Economic Development Fund to be appropriated
13 pursuant to a fund management plan approved by the Budget and Finance Committee of the
14 Navajo Nation Council, and Council, and the remaining sixteen point six, six...percent
15 (16.6666%) of the ~~reserve~~revenue shall be deposited to the Fire and Rescue Services Fund to
16 be appropriated pursuant to a fund management plan approved by the Budget and Finance
17 Committee of the Navajo Nation Council.

18 C. Fifty percent (50%) of the revenue collected from retail establishments located in the Navajo
19 Nation shall be deposited into a trust fund to be appropriated pursuant to a plan of operation
20 developed by the Office of Navajo Government Development and approved by the Budget
21 and Finance Committee of the Navajo Nation Council; sixteen point six, six...percent
22 (16.6666%) of the revenue collected shall be deposited into the Judicial/Public Safety
23 Facilities Fund to be appropriated pursuant to a fund management plan approved by the
24 Budget and Finance Committee of the Navajo Nation Council; eight point three, three...
25 percent (8.3333%) of the revenue collected shall be deposited into the Scholarship Fund to be
26 appropriated pursuant to a fund management plan approved by the Budget and Finance
27 Committee of the Navajo Nation Council and eight point three, three...percent (8.3333%) of
28 the revenue collected shall be deposited into the Economic Development Fund to be
29 appropriated pursuant to a fund management plan approved by the Budget and Finance
30 Committee of the Navajo Nation Council, and the remaining sixteen point six, six...percent

1 (16.6666%) of the ~~reserve~~revenue shall be deposited to the Fire and Rescue Services Fund to
2 be appropriated pursuant to a fund management plan approved by the Budget and Finance
3 Committee of the Navajo Nation Council.

4 D. Sixty-percent (60%) of the revenue collected from the Sales Tax revenue associated with
5 construction of public water and wastewater systems shall be deposited into the Navajo Tribal
6 Utility Authority Emergency Reserve Fund and the Navajo Tribal Utility Authority
7 Replacement Reserve Fund in accordance with a fund management plan approved by the
8 Budget and Finance Committee of the Navajo Nation Council. Monies from those funds will
9 be expended in accordance with the fund management plan. Twenty percent (20%) of the
10 revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund to be
11 appropriated pursuant to a fund management plan approved by the Budget and Finance
12 Committee of the Navajo Nation Council; ten percent (10%) of the revenue collected shall be
13 deposited into the Scholarship Fund to be appropriated pursuant to a fund management plan
14 approved by the Budget and Finance Committee of the Navajo Nation Council; and ten
15 percent (10%) of the revenue collected shall be deposited into the Economic Development
16 Fund to be appropriated pursuant to a fund management plan approved by the Budget and
17 Finance Committee of the Navajo Nation Council.

18 19 **§621. NO CONFLICT WITH LOCAL GOVERNANCE ACT**

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

22 23 **§622. SEVERABILITY**

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

28 29 **§623. EFFECTIVE DATE**

30 This Chapter shall become effective ~~January 1, 2013~~ in accordance with 2 N.N.C. § 221(B).

1 **§624. REPEALS**

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

5 -----

6 The Office of the Navajo Tax Commission is authorized to prepare a final, clean version of the
7 Sales Tax as amended herein, with no stricken or underlined wording shown.

8
9 **SECTION 4. EFFECTIVE DATE**

10 This Act shall be effective upon its approval pursuant to 2 N.N.C. §221(B).

11
12 **SECTION 5. CODIFICATION**

13 The provisions of this Act that amend the Navajo Nation Code shall be codified by the Office
14 of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended
15 provisions in the next codification of the Navajo Nation Code.

16
17 **SECTION 6. SAVINGS CLAUSE**

18 If any provision of this Act is determined invalid by the Supreme Court of the Navajo Nation,
19 or by any District Court of the Navajo Nation without appeal to the Navajo Nation Supreme
20 Court, the portions of this Act not determined invalid shall remain as the law of the Navajo
21 Nation.

THE NAVAJO NATION

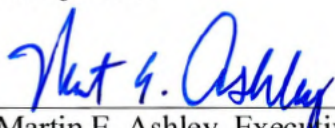
JONATHAN NEZ | **PRESIDENT**

MYRON LIZER | **VICE PRESIDENT**



MEMORANDUM

TO: Honorable Jaime Henio, Chairman
Budget and Finance Committee
Navajo Nation Council

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

DATE: May 5, 2021

SUBJECT: Amendment to the Sales Tax Statute recommended by Navajo Tax
Commission resolution TAX-20-238

The Office of the Navajo Tax Commission (ONTC) previously met and discussed the recommendation of the Navajo Tax Commission resolution TAX-20-20 to amend the Sales Tax Statute and to sponsor the amendment to the Sales Tax Statute.

One of the main purpose of the amendment is increase the range of the Sales Tax that is currently 2% to 6% and changing to 2% to 10% (increase range to 10%). Other amendments are to the Definitions and providing clarification regarding agriculture for which the Exemptions and Exclusions is clarifying this only applies Traditional Navajo agricultural farming and livestock activities and not for commercial agricultural activities. There are also other clarifications to assist ONTC in administering the Sales Tax.

Should there be any questions, please call me at tribal extension 6992 or email at mashley@navajo-nsn.gov.

Attachment: Navajo Tax Commission resolution TAX-20-238



TAX-20-238

RESOLUTION OF THE NAVAJO TAX COMMISSION

**RECOMMENDING TO THE NAVAJO NATION COUNCIL THE APPROVAL OF
AMENDMENTS TO THE SALES TAX STATUTE, 24 N.N.C. §§ 601 *ET SEQ.***

WHEREAS:

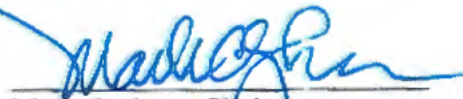
1. The Navajo Tax Commission is established as a part of the Executive Branch of the Navajo Nation government, and is empowered to review and study all sources of wealth and income within the Navajo Nation and the possible revenues from the taxation of those sources, in order to develop an appropriate, comprehensive system of taxation, 2 N.N.C. §§ 3351 and 3353(A)(1); and
2. The Navajo Nation Council enacted the Sales Tax Statute pursuant to Resolution No. CO-84-01, as amended by CJA-03-07, CO-38-09, CAP-20-14, CO-62-17, CJA-07-18, and CO-74-18, and codified at 24 N.N.C. §§ 601 *et seq.*; and
3. The Navajo Tax Commission now proposes amendments to the Sales Tax Statute, in underline-strikeout format, attached as Exhibit "1", and recommends that the Navajo Nation Council approve and adopt the proposed amendments.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tax Commission hereby proposes amendments to 24 N.N.C. §§ 601 *et seq.* of the Sales Tax Statute, attached as Exhibit "1".
2. The Navajo Tax Commission recommends that the Navajo Nation Council approve the amendments to the Sales Tax Statute, attached as Exhibit "1".

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tax Commission at a duly called meeting held in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 4 in favor and 0 opposed, with 0 abstaining, this 31st day of March, 2020.


Mark Graham, Chairperson
Navajo Tax Commission

Motion: Loretta Largo
Second: Shana Barehand

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



EXHIBIT 1 to TAX-20-238

SALES TAX

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601. SHORT TITLE

The tax imposed by this Chapter shall be called the "Sales Tax."

602. PURPOSE

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

603. 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 for a period, and then multiplying those gross receipts by the applicable tax rate.

604. LEGAL INCIDENCE AND RESPONSIBILITY FOR PAYMENT

The person liable for the payment of the tax imposed by this Chapter is the person receiving the gross receipts from a sale.

605. RATE OF TAX

- A. The tax imposed by this Chapter is imposed at a rate of not less than two percent (2%), nor more than ~~six ten~~ percent (~~610~~%), which shall be specifically established by regulations promulgated by the Navajo Tax Commission. ~~This tax shall not be imposed on the purchase of fresh fruits, fresh vegetables and filtered bottled water including nuts, nut butters, and seeds.~~ Until another rate is established, the rate shall be ~~five six~~ percent (~~56~~%) of the applicable gross receipts from all retail sales (~~.0506~~ x applicable gross receipts).
- B. A majority of the registered voters of any governance-certified chapter may enact an ordinance imposing an additional tax rate in addition to the rate approved by the Navajo Tax Commission in accordance with paragraph A, above. This additional rate may be from one-quarter of one percent (.25%) to four percent (4%) and shall be set forth in the ordinance.

606. ADMINISTRATION

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

607. 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. "Agricultural Producers" means Persons who are farmers, ranchers, growers, and producers, on agricultural lands within the Navajo Nation, who grow, harvest, raise, or prepare for market, and sell their own Agricultural Products within the Navajo Nation.
- B. "Agricultural Products" means crops such as vegetables, fruits, grains, grasses, roots, and legumes, that are grown from cultivating the soil and harvested for use as food for humans and animals, as fiber for clothing and other products, or for production of fuel; livestock such as cattle, sheep, goats, buffalo, hogs, and poultry, raised for purposes of production of meat, dairy, eggs, and other food products for human consumption, or for production of wool, skins, and pelts for clothing and other purposes; livestock such as horses and mules for work on a ranch or farm; farm-raised fish; bees and honey; trees grown for production of fruit, lumber, fuel, and fiber; flowers cultivated for sale; and other similar natural plant or animal products.
- ~~AC.~~ "Consideration" means any money or other pecuniary benefit, goods, personal or real property, services, or any combination thereof, which accrues as a right, profit, advantage, or benefit to a person, or which reflects a payment, detriment, loss, or responsibility of a person.
- ~~BD.~~ "Construction activity" means any building, altering, repairing, installing, or demolishing in the ordinary course of business, whether a project is completed or not, any:
 - 1. Road, highway, bridge, parking area, fence, livestock guard, gate, or related structure;
 - 2. Building, stadium, or other structure;

3. Airport, railway, or similar transportation facility;
4. Park, trail, athletic field, golf course, or similar facility;
5. Dam, reservoir, canal, ditch, culvert, or similar facility;
6. Sewerage or water treatment facility, power plant, pumping station, natural gas compressing station, gas processing plant and gathering lines, coal gasification plant, refinery, distillery, blending, or similar facility;
7. Sewerage, water, coal, coal slurry, gas, or other pipeline;
8. Transmission line;
9. Radio, television, microwave, telephone, or other similar tower;
10. Water, oil, gasoline, fuel or other storage tank;
11. Shaft, tunnel, or other mining appurtenance;
12. Microwave station, or similar facility;
13. Leveling, clearing, or other preparation of land;
14. Excavating of earth;
15. Drilling of wells of any type, including seismograph shot holes or core drilling; or
16. Any similar work or activity.

EE. "Employee" means a person in the service of another person under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.

EE. "Enterprise" means any non-corporate business entity created by action of the Navajo Nation Council.

EG. "Fair market value" means the amount of consideration at which personal or real property or services would change hands via an arms-length transaction between a willing buyer and a willing seller, or a willing lessor and a willing lessee, neither of whom is under any compulsion to act.

"Fair market value" is to be determined on the basis of consideration in comparable sales, leasing, or rental transactions. If such information is not available, the Office of the Navajo Tax Commission may estimate the fair market value of the subject of a transaction according to procedures established by regulations.

FI. "Fresh fruits and fresh vegetables" means produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage.

GI. "General contract" means any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or unwritten, which is entered into by a general contractor.

HJ. "General contractor" means a person primarily responsible for the performance of a construction project pursuant to a contract.

A "General contractor" may enter into subcontracts, but remains primarily responsible for the management, planning, supervision, coordination, and performance of the contract.

HK. "Gross receipts" means the total amount of money, credit, or any other pecuniary benefit or advantage, plus the fair market value of any other consideration, which is actually received during any period by any person from the sale or leasing of real or personal property of any kind, the sale of services of any kind, and any other productive activity of any kind, whether for profit or not, conducted wholly or partially within the Navajo Nation. "Gross receipts" does not include the salary, ~~or wages, or the market value of employee benefits such as free or reduced cost meals,~~ of an individual engaged as an employee.

"Gross receipts" includes those amounts received for any and all personal or real property which is an integral, but not necessarily a significant or primary, component of the service(s) rendered, regardless of the date, time, manner, and location of sale, delivery, or use of such personal or real property.

"Gross receipts" includes those amounts received for any and all services which are an integral, but not necessarily a significant or primary, component of the sale or delivery of personal or real property, such as those amounts received as payment or reimbursement for

costs of putting personal or real property into a finished and marketable form, payment for delivery and set-up, and payment for warranty or service contracts, regardless of the date, time, manner, or location of performance of such services(s).

"Gross receipts" does not include amounts received as reimbursement for federal, state, or Navajo Nation taxes when the seller/taxpayer collects tax from buyer and taxpayer/seller provides proof it has paid the tax to the above named taxing jurisdictions.

"Gross receipts" are recognized when seller receives the payment rather than when goods are delivered or services are received.

FL. "Manufacturing activity" means combining or processing components or materials into a finished product, whether manually or mechanically, for the purpose of resale in the ordinary course of business, but does not include construction activity.

JM. "Nut Butters" means ground nuts blended to make a paste or spread.

LN. "Nuts" means a fruit consisting of a hard or tough shell around an edible kernel.

MO. "Navajo Nation" means all areas within the territorial jurisdiction of the Navajo Nation government.

NP. "Performance" means the partial or complete fulfillment or accomplishment of a promise, contract, or other obligation according to the terms of such promise or contract.

EQ. "Period" means a calendar quarter.

PR. "Personal property" means any tangible property which may be seen, touched, weighed or measured, or is in any manner perceptible to the human senses, including, but not limited to, electricity, compressed or liquefied natural gas, kerosene, liquefied petroleum gas, butane, propane, non-fuel stove oil, fuel products used for the propulsion of aircraft, goods or merchandise of any kind, goods purchased for consumption or other use, goods purchased for incorporation into other personal or real property, and goods purchased for use in the performance of any service, whether or not such goods are consumable, movable, separable, affixed to, or incorporated into, other personal or real property, and whether or not such goods retain their original character upon final sale.

"Personal property" also means any intangible property which cannot be physically perceived by the human senses, such as patents, trademarks, copyrights, franchises, licenses, knowledge, information, ideas, advice, and other intangible items of value or legal rights of any kind.

QS. "Sale" means any transaction, including a lease or rental, for consideration of any kind that results in the transfer of ownership and/or possession, delivery, use, or enjoyment of personal or real property, or the performance of any service.

A "Sale" includes circumstances where the title to personal or real property is retained as security for payment, and includes circumstances where no actual physical transfer of personal or real property or services occurs.

RT. "Sale for resale" means a sales transaction of tangible personal property made to a buyer for purposes of being resold within the Navajo Nation by the buyer in the ordinary course of business, any further sale, processing, manufacturing, or other commercial or industrial purposes, as distinguished from a retail sale.

"Sale for resale" does not include the sale of services.

"Sale for resale" does not include the sale of tangible personal property for consumption by the buyer, or to a buyer who is the end-use consumer or to the agent of the end-use consumer.

"Sale for resale" does not include sale of tangible personal property for purposes of further processing, manufacturing, or other commercial or industrial purposes.

A transaction by an upstream seller shall only be considered a "sale for resale" if all of the following requirements are met: (1) the last seller for the last sale occurring within the Navajo Nation, or another seller in the supply chain, has paid the applicable Sales Tax to the Navajo Nation on a sale of the same tangible personal property; (2) the seller who paid the Sales Tax has obtained from the Office of the Navajo Tax Commission a valid Navajo Tax Exemption Certificate, and has provided the Certificate to the upstream seller; (3) the upstream seller filed a Return with the Office of the Navajo Tax Commission and attached a copy of the valid Navajo Tax Exemption Certificate pertaining to the sale in question; and (4) compliance with

other requirements related to "sale for resale" set forth in the Sales Tax Regulations.

~~RU~~. "Seeds" means the grains or ripened ovules of fruits, vegetables, or plants such as sunflower seeds, flax seeds, pumpkin seeds, and mixed nuts without sugared candies.

~~TV~~. "Services" means manual, mechanical, or intellectual labor performed, and includes other business activity that does not have physical characteristics.

~~UW~~. "Subcontract" means any legal duty, obligation, or responsibility, express ~~or implied~~, unilateral or bilateral, written ~~or unwritten agreement~~, between a general contractor and a subcontractor.

~~VX~~. "Subcontractor" means a ~~P~~person who takes from the general contractor a specific part of the work undertaken by the general contractor.

~~Y~~. "Traditional" means Navajo culture, laws, philosophies, values, customs, practices, and methods, that have been passed down from one generation to the next either orally or in writing.

~~Z~~. "Upstream Seller" means a Person who sells tangible personal property to a buyer other than the end-use consumer, where the sale occurred within the Navajo Nation, and such buyer later resells the same property within the Navajo Nation.

~~WAA~~. "Water" means drinking water that has no added sugar or other artificial sweeteners. It includes artisan, fluoridated, mineral, purified, sparkling, spring, or ~~sterile~~ (distilled) water.

608. NAVAJO NATION GOVERNMENT

A. Sales by corporations owned by the Navajo Nation government or any political sub-division 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 according to the following schedule:

1. For all periods during calendar years 2001 and 2002, the Navajo Nation government, political subdivisions, and enterprises shall not be subject to the tax;
2. For all periods during calendar year 2003, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to twenty-five percent (25%) of the rate imposed under § 605 of this Chapter;
3. For all periods during calendar year 2004, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to fifty percent (50%) of the rate imposed under § 605 of this Chapter;
4. For all periods during calendar year 2005, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to seventy-five percent (75%) of the rate imposed under § 605 of this Chapter;
5. For all periods during calendar year 2006 and all periods thereafter, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to one hundred percent (100%) of the rate imposed under § 605 of this Chapter.

C. In cases where a person is partially owned by the Navajo Nation government or any of its political subdivisions or enterprises, gross receipts shall be prorated if necessary.

609. EXEMPTIONS AND EXCLUSIONS

A. Nothing in this Chapter shall be construed as imposing a tax on the gross receipts of a subcontractor, provided that:

1. The general contractor with whom the subcontractor has contracted has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter by signing and issuing a certificate of exemption to the subcontractor; and,
2. The subcontractor must obtain from the general contractor a certificate of exemption issued to the general contractor by the Office of the Navajo Tax Commission. This certificate must be signed by the general contractor, and must indicate that the

general contractor has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter.

3. The Commission may by form or regulation provide for the proper issuance and filing of the certificate of exemption.
- B. In calculating applicable gross receipts, a person may exclude those gross receipts on which any of the following Navajo Nation taxes have been paid:
 1. Navajo Nation Oil and Gas Severance Tax; or
 - ~~2. Navajo Tobacco Products Tax; or~~
 - ~~3. Navajo Nation Fuel Excise Tax.~~
- C. The tax imposed by this Chapter does not apply to gross receipts generated directly by the following:
 1. Sales for resale;
 2. Sales of Agricultural Products related to by Agricultural Producers engaged in Traditional Navajo agricultural, farming, ~~and/or~~ livestock activities conducted within the Navajo Nation. This exemption shall not apply to sales by commercial Agricultural Producers;
 3. Sales, other than sales from an unrelated trade or business as defined in §§ 511 – 513 of the Internal Revenue Code,¹ 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 Code² at the time of sale;
 4. Sales by facilities engaged in childcare, foster care or adoption placement, or battered families and homeless shelters;
 5. Sales of stocks, private or government-issued bonds, mutual funds, or other investments, including income received as dividends or interest;
 6. Sales by itinerant salespersons;
 7. Occasional sales by persons who are not regularly engaged in the business of selling personal or real property or services;
 8. Sales by educational institutions, including primary and secondary schools, colleges, vocational, and job training programs;
 9. Sales by hospitals and health-care organizations or facilities, such as nursing care institutions, residential care and mental health facilities, senior citizen care facilities or retirement homes, kidney dialysis facilities and blood banks, or other facilities which provide medical care and services;
 10. Sales from coin-operated vending machines. This exemption shall not apply to coin-operated car washes and laundromats of any type;
 11. Sales related to traditional Native American ceremonies or services;
 12. Sales of prescription medicines, prosthetic devices, or other medical devices, including medical oxygen, monitoring devices, dentures, hearing aids, crutches, insulin syringes, blood sugar monitoring strips or devices, prescription eyeglasses and contact lenses, or any durable medical equipment primarily and customarily used for medical purposes and not useful in the absence of illness, injury, or other medical condition;
 13. Sales related to funerals and human burials;
 14. Sales paid for by coupons issued by the United States Department of Agriculture under the Food Stamp Act of 1977 (P.L. 95-113);³
 15. Sales paid for by vouchers issued under § 17 of the Child Nutrition Act (P.L. 95- 627 and P.L. 99-669);⁴
 16. Sales of newspapers or other daily publications; or

¹ 26 U.S.C. §§ 511 to 513.

² 26 U.S.C. § 501(c)(3) and (19)

17. Sales of mobile homes, motor homes, motor vehicles, tractors, and hauling trailers for private use, possession, or enjoyment, provided that such items are not resold or used in any business activity or service.

18. Sales of fresh fruits, fresh vegetables, filtered bottled water, nuts, nut butters, and seeds.

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

E. Through December 31, 2005, a person may exclude from gross receipts any amount received from a transaction on which the Hotel Occupancy Tax has been paid.

610. CREDITS

A person may take a credit against the tax imposed by this Chapter for taxes paid pursuant to any nondiscriminatory ~~excise sales or gross receipts~~ tax imposed ~~by Kayenta Township and To' Nanees' Dizi' / Tuba City Chapter any duly established township or local government subunit,~~ provided that revenues from such excise tax are utilized to provide essential governmental services.

611. RESERVED

612. FILING OF RETURN

A. Each person must file a return indicating all sales from applicable gross receipts, which shall be reported on a cash basis as opposed to on an accrual basis, 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 May 15, August 15, November 15, and February 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 that the return be 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. No return need be filed by any person who is claiming a credit under § 610, provided that the Office of the Navajo Tax Commission may require such person to file the information necessary to establish its eligibility for the credit.

E. In the case of the exemption provided for in § 609(A), the filing by a person of a proper ~~Ce~~ertificate of ~~E~~xemption with the Office of the Navajo Tax Commission shall constitute a claim for exemption.

613. 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.

614. 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 seven (7) ~~four~~ years beyond the end of the period to which the records relate.

³ 7 U.S.C. §2011 *et. seq.*

⁴ 42 U.S.C. § 1786

615. RESERVED

616. RESERVED

617. RESERVED

618. RESERVED

619. RESERVED

620. 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. To the extent that any amount is collected pursuant to Section 605(B) above, that amount shall be transmitted by the Office of the Navajo Tax Commission to the chapter in a timely manner to be expended in accordance with the ordinance referred to in Section 605(B), above.
- B. Except as otherwise provided in subsections (C) or (D), fifty percent (50%) of the revenue collected shall be deposited into the General Fund of the Navajo Nation, sixteen point six, six... percent (16.6666%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund, eight point three, three...percent (8.3333%) of the revenue collected shall be deposited to the Scholarship Fund, and eight point three, three...percent (8.3333%) of the revenue shall be deposited to the Economic Development Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council, and Council, and the remaining sixteen point six, six...percent (16.6666%) of the ~~reserve~~ revenue shall be deposited to the Fire and Rescue Services Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.
- C. Fifty percent (50%) of the revenue collected from retail establishments located in the Navajo Nation shall be deposited into a trust fund to be appropriated pursuant to a plan of operation developed by the Office of Navajo Government Development and approved by the Budget and Finance Committee of the Navajo Nation Council; sixteen point six, six...percent (16.6666%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council; eight point three, three... percent (8.3333%) of the revenue collected shall be deposited into the Scholarship Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council and eight point three, three...percent (8.3333%) of the revenue collected shall be deposited into the Economic Development Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council, and the remaining sixteen point six, six...percent (16.6666%) of the ~~reserve~~ revenue shall be deposited to the Fire and Rescue Services Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.
- D. Sixty-percent (60%) of the revenue collected from the Sales Tax revenue associated with construction of public water and wastewater systems shall be deposited into the Navajo Tribal Utility Authority Emergency Reserve Fund and the Navajo Tribal Utility Authority

Replacement Reserve Fund in accordance with a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council. Monies from those funds will be expended in accordance with the fund management plan. Twenty percent (20%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council; ten percent (10%) of the revenue collected shall be deposited into the Scholarship Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council; and ten percent (10%) of the revenue collected shall be deposited into the Economic Development Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.

621. 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.

622. SEVERABILITY

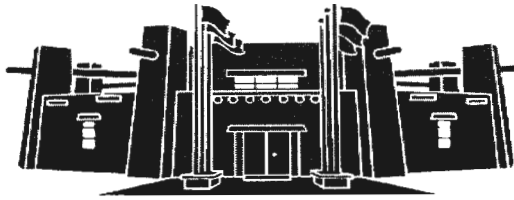
If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision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

623. EFFECTIVE DATE

This Chapter shall become effective ~~January 1, 2018~~ in accordance with 2 N.N.C. § 221(B).

624. REPEALS

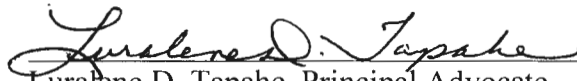
All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.



MEMORANDUM

TO: Hon. Jaime Henio, Chairman
Budget and Finance Committee
24th Navajo Nation Council

FROM:


Lurafene D. Tapahe, Principal Advocate
Office of Legislative Counsel

DATE: July 9, 2021

SUBJECT: AN ACT RELATING TO THE RESOURCES AND DEVELOPMENT, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING THE NAVAJO NATION SALES TAX AT 24 N.N.C. §601-§624

Per your request, the Office of Legislative Counsel has prepared the above-referenced proposed legislation and related summary sheet. Based on existing Navajo Nation law and other applicable laws, and upon review of all documents submitted, this legislation as drafted is legally sufficient. However, as with any action of government, this legislation may be subject to review by the Navajo Nation courts in the event of proper legal challenge.

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

The Office of Legislative Counsel has reviewed the appropriate standing committees' authority to consider this legislation, based on the standing committees' powers outlined in Title 2 of the Navajo Nation Code. Nevertheless, the Speaker of the Navajo Nation Council may assign this legislation to committee(s) other than those listed in the title, pursuant to the Speaker's authority under 2 N.N.C. §164(A)(5).

If this proposed legislation is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

Thank you.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0111-21_

SPONSOR: Jamie Henio

**TITLE: An Act Relating to the Resources and Development, Law and Order,
Budget and Finance, and Naabik'iyáti Committees, and the Navajo Nation Council;
Amending the Navajo Nation Sales Tax at 24 N.N.C. §601-624**

Date posted: July 09, 2021 at 4:27PM

Digital comments may be e-mailed to 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.: 0111-21

SPONSOR: Honorable Jamie Henio

TITLE: An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabik'iyáti Committees, and the Navajo Nation Council; Amending the Navajo Nation Sales Tax at 24 N.N.C. §601-624

Posted: July 09, 2021 at 4:27 PM

5 DAY Comment Period Ended: July 14, 2021

Digital Comments received:

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



**Legislative Tracking Secretary
Office of Legislative Services**

07/15/21; 10:00 AM

Date/Time

**RESOURCES AND DEVELOPMENT COMMITTEE
24th NAVAJO NATION COUNCIL**

THIRD YEAR 2021

COMMITTEE REPORT

Mr. Speaker,

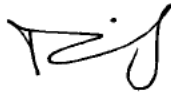
The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

LEGISLATION # 0111-21: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, LAW AND ORDER, BUDGET AND FINANCE, NAABIK'IYATI COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING THE NAVAJO NATION SALES TAX AT 24 N.N.C. §§601-624. *Sponsor: Honorable Jamie Henio; Co-Sponsor: Honorable Jimmy Yellowhair*

Has had it under consideration and reports a DO PASS with no amendments

And thereafter the legislation was referred to Law and Order Committee.

Respectfully submitted,



Rickie Nez, Chairperson
Resources and Development Committee of
the 24th Navajo Nation Council

Date: July 28, 2021 –Regular Meeting (Teleconference)
Meeting Location: (RDC members called in via teleconference from their location within the boundary of the Navajo Nation.)

Main Motion:

Motion: Wilson C. Stewart, Jr. S: Herman M. Daniels V: 4-0-1 (CNV)

In Favor: Mark A. Freeland, Wilson C. Stewart, Jr., Kee Allen Begay Jr., and Herman M. Daniels

Excuse: Thomas Walker, Jr.

Not Voting: Presiding Chairperson Rickie Nez

(NOTE: VOTE TALLY attached hereto)

RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council

THIRD YEAR 2021

ROLL CALL
VOTE TALLY SHEET

LEGISLATION # 0111-21: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, LAW AND ORDER, BUDGET AND FINANCE, NAABIK'IYATI COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING THE NAVAJO NATION SALES TAX AT 24 N.N.C. §§601-624. *Sponsor: Honorable Jamie Henio; Co-Sponsor: Honorable Jimmy Yellowhair*

Date: July 28, 2021 –Regular Meeting (Teleconference)
Meeting Location: (RDC members called in via teleconference from their location within the boundary of the Navajo Nation.)

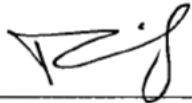
Main Motion:

Motion: Wilson C. Stewart, Jr. S: Herman M. Daniels V: 4-0-1 (CNV)

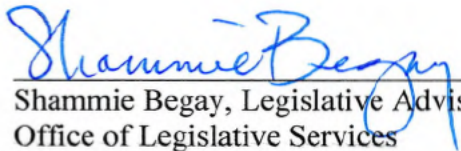
In Favor: Mark A. Freeland, Wilson C. Stewart, Jr., Kee Allen Begay Jr., and Herman M. Daniels

Excuse: Thomas Walker, Jr.

Not Voting: Presiding Chairperson Rickie Nez



Honorable Rickie Nez, Presiding Chairperson
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services

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

LEGISLATION NO.: 0111-21

SPONSOR: Honorable Jamie Henio


TITLE: An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabik'iyáti Committees, and the Navajo Nation Council; Amending the Navajo Nation Sales Tax at 24 N.N.C. §601-624

Posted: July 09, 2021 at 4:27 PM

5 DAY Comment Period Ended: July 14, 2021

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Comments/Recommendations	1) Heather Fleming, Change Labs


**Legislative Tracking Secretary
Office of Legislative Services**

08/05/21 4:23pm
Date/Time



August 2, 2021

Re: Request to table Legislation 0111-21

Dear Honorable Delegates of the 24th Navajo Nation Council,

Shí éí Heather Fleming yinishyé and I'm a member of the Navajo Nation and also the Executive Director of Change Labs in Tuba City. Change Labs is a Navajo-led organization committed to supporting Native American entrepreneurs and small business owners across the Navajo Nation. We provide modern workspace, business equipment and tools, resources, and business coaching to small business owners and entrepreneurs who want to start and grow a business. Change Labs also runs a research and data initiative that documents [the state of doing business on the Navajo Nation](#) relative to 190 countries around the globe.

Change Labs is also a member of the [Navajo Entrepreneurship Coalition](#) (NEC), which includes the Dineh Chamber and ACES School, which advocates for increased collaboration between our elected officials and our Diné people to create policies and laws that benefit all.

I recently became aware of Legislation 0111-21, which would allow the Navajo Tax Commission to set a maximum sales tax rate of 10%. Based on Change Labs' deep knowledge of the Navajo small business community, I am writing to you and our other elected leaders to consider the financial impact on the Navajo small business community and the Navajo Nation economy as a whole. Based on our research, the community of Navajo sole proprietors and other small businesses make a significant contribution to our economy. Many are already wary of paying taxes since the economic benefit is not transparent. Increasing the sales tax rate over time, without transparency of the benefit of paying taxes and without any attempt to modernize the Navajo Tax Commission with an online payment system, could only encourage more business owners to resist paying taxes.

I call on our leaders to table Legislation 0111-21 so that:

- 1) The NEC can present data that demonstrates the economic impact of Legislation 0111-21 on the Navajo small business community and whether or not the small business impact neutralizes the proposed economic benefit,
- 2) The Navajo Tax Commission or the NEC can host a public forum with and for the small business community to communicate the key issue and seek solutions with the business community,
- 3) The Navajo Tax Commission or NEC can explore and present alternative solutions that could *incentivize* Navajo business tax payment.

If you have any questions about my request or Change Labs' research on the Navajo business regulatory environment, I would be happy to be of service.

Thank you for your leadership and for your time.

Sincerely,

A handwritten signature in dark ink, appearing to read "H Fleming". The signature is fluid and cursive, with the first name "H" being a stylized capital letter.

Heather Fleming
Change Labs
Executive Director
heather@nativestartup.org

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

LEGISLATION NO.: 0111-21

SPONSOR: Honorable Jamie Henio

TITLE: An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabik'iyáti Committees, and the Navajo Nation Council; Amending the Navajo Nation Sales Tax at 24 N.N.C. §601-624

Posted: July 09, 2021 at 4:27 PM

5 DAY Comment Period Ended: July 14, 2021

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	1) Jefferson Begay, Dineh Chamber of Commerce
Comments/Recommendations	<i>None</i>

VSRedhorse

**Legislative Tracking Secretary
Office of Legislative Services**

August 6, 2021 ; 9:45 AM

Date/Time



Via comments@navajo-nsn.gov

August 1, 2021

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

Re: Comments: Legislation No. 0111-21 - NOT SUPPORTED

On behalf of the 6,000 Navajo businesses, Dineh Chamber of Commerce, and other business organizations here on the Navajo Nation, the Dineh Chamber of Commerce does NOT support proposed legislation no. 0111-21, the Navajo Nation sales tax amendment resolution:

Any tax legislation should be subject to public hearings particularly if impacts are passed-on to Navajo businesses. Historically, the Office of the Navajo Tax commission holds Public Hearings to give the public and business community an opportunity to comment. Perhaps given Covid-19, the Tax Commission decided to forego this important process. This should not be case as this legislation appears rushed, and if passed, will raise taxes. Public hearings are important as such we strongly recommend that this legislation be subject to public hearings.

As for 0111-21 specifically, this particular legislation proposes to increase the sales tax range to 10%, a 66% increase. For small businesses, this 4% increase, if and when it happens, is a significant increase that will decrease profits, decrease ability to sustain jobs and would increase business vulnerability. Our Navajo leadership, through the Navajo Tax Commission should further investigate the tax increase impacts.

0111-21 also adds and amends several definitions and adds several exclusionary items including sales of fresh foods. The Chambers supports including fresh foods on the exclusion list. There are other taxable activities, however, that should be included on the exclusion list that bean has raised with the Navajo Tax Commission, but action has not taken place

We look forward to public hearings as this is particularly important to the business community.

Sincerely,

Jefferson Begay
Chairman of the Board

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

LEGISLATION NO.: 0111-21

SPONSOR: Honorable Jamie Henio

TITLE: An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabik'iyáti Committees, and the Navajo Nation Council; Amending the Navajo Nation Sales Tax at 24 N.N.C. §601-624

Posted: July 09, 2021 at 4:27 PM

5 DAY Comment Period Ended: July 14, 2021

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Comments/Recommendations	1) Lawrence R. Platero, NAPI Board of Directors


**Legislative Tracking Secretary
Office of Legislative Services**

08/11/21; 4:35 PM

Date/Time



AUG 11 '21 PM 2:09

NAVAJO AGRICULTURAL PRODUCTS INDUSTRY

P.O. Drawer 1318
Farmington, NM 87499
Telephone: (505) 566-2600
Fax: (505) 960-9458
www.navajopride.com

August 10, 2021
21-HQ-54

Sent via Email

Rickie Nez, Chairperson
Resources and Development Committee
Email: rickienez@navajo-nsn.gov

Eugenia Charles-Newton, Chairperson
Law and Order Committee
Email: echarles-newton@navajo-nsn.gov

Jamie Henio, Chairperson
Budget and Finance Committee
Email: jhenio@navajo-nsn.gov

Seth Damon, Chairperson
Naabik'iyáti Committee
Email: sdamon@navajo-nsn.gov

Seth Damon, Speaker
Navajo Nation Council
Email: sdamon@navajo-nsn.gov

Re: Comments Regarding Legislation No. 0111-21 Sponsored by Jamie Henio, entitled "An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabik'iyáti Committees, and the Navajo Nation Council; Amending the Navajo Nation Sales Tax at 14 N.N.C. § 601-§624."

Dear Chairpersons and Committee Members:

Please accept these comments from the Navajo Agricultural Products Industry ("NAPI") Board of Directors and Executive Staff regarding Legislation No. 0111-21 sponsored by Jamie Henio and co-sponsored by Jimmy Yellowhair. This letter summarizes the issues that should be considered when evaluating this proposed legislation to amend the Navajo Nation Sales Tax at 14 N.N.C. §601-§624 and the impact that such amendments may have on NAPI's commercial agricultural operations.

the Navajo Nation.” Under 14 N.N.C. § 607(B), the proposed amendments also define “Agricultural Products” as:

...crops such as vegetables, fruits, grains, grasses, roots, and legumes, that are grown from cultivating soil and harvested for use as food for humans and animals, as fiber for clothing and other products, or for production of fuel; livestock such as cattle, sheep, goats, buffalo, hogs, and poultry, raised for purposes of production of meat, dairy, eggs, and other food products for human consumptions, or for production of wool, skins, and pelts for clothing and other purposes; livestock such as horses and mules for work on a ranch or farm; farm-raised fish; bees and honey; trees grown for production of fruit, lumber, fuel, and fiber; flowers cultivated for sale; and other similar natural plant or animal products.

Although NAPI falls within these definitions, NAPI is specifically prevented from qualifying for the exemption and exclusion that is provided by 14 N.N.C. §609(C)(2) based on the last sentence of the subsection that states, “[t]his exemption shall not apply to sales by commercial Agricultural Producers.”

The majority of NAPI’s sales are made to the Navajo Nation government, Navajo Nation chapters and Navajo Nation membership. NAPI grows a variety of quality forage, feed, and food products under the Navajo Pride brand as retail and wholesale. The Region 2 Store is located at NAPI and sells all Navajo Pride products to accommodate local customers. Subjecting NAPI to a 10% sales tax will have a significant impact on NAPI’s overall revenues, which will eliminate NAPI’s ability to pay dividends to the Navajo Nation each year and will lead to price increases for NAPI’s products to consumers effectively passing the tax onto consumers. For example, in FY2020, NAPI’s sales on the Navajo Nation generated a total of \$41,136,743. If NAPI were subject to a 10% sales tax in FY2020, NAPI would be required to increase all prices for all goods by 10%, which would lead to a total cost to the consumer of \$45,250,417.30.

Despite being the largest agricultural producer on the Navajo Nation, NAPI was not consulted by the Office of Navajo Tax Commission or the Navajo Tax Commission concerning the proposed amendments to the Navajo Nation Sales Tax at 14 N.N.C. §601-§624. NAPI was also not provided an opportunity to participate at any time during the development of these amendments and did not receive notice until after Legislation No. 0111-21 was duly approved by the RDC. As a wholly-owned enterprise of the Navajo Nation, NAPI should have been provided an opportunity to participate in the development of these amendments and respond to the overall impact that such amendments would have on NAPI’s activities on the Navajo Nation.

Subjecting all commercial Agricultural Producers to a 10% sales tax will also affect NAPI’s existing contracts with other businesses. For example, NAPI currently purchases inputs from other businesses that provide services to NAPI. Currently, such businesses qualify for the exemption and exclusion provisions and/or the sale for resale exemptions and are therefore, not subject to the Navajo Nation sales tax. However, by amending the definition of “sale for resale” and inserting the last sentence of 14 N.N.C. §609(C)(2), which states, “[t]his exemption shall not apply to sales by commercial Agricultural Producers”, such businesses will also be subject to the 10% sales tax.

The Navajo Nation Tax laws do not prevent the pass through of tax obligations onto a buyer; meaning that such businesses will likely add the Navajo Nation 10% sales tax onto all contracts with NAPI moving forward, which inevitably will lead to NAPI paying for the taxes for services and supplies it receives from other businesses.

To illustrate, NAPI currently utilizes products and services offered by Wilbur-Ellis. Pursuant to its Plan of Operation, NAPI purchases seed, fertilizer, pesticides, and other products and services for agricultural production (“agricultural products and services”) from agricultural supply companies, including Wilbur-Ellis. The sales of agricultural products and services are exclusively for use by NAPI in the production of NAPI agricultural products on the NAPI farm located on the Navajo Nation.

Wilbur-Ellis sells fertilizers, pesticides, and seeds to NAPI. NAPI uses Wilbur-Ellis' agricultural products and services to grow crops on the NAPI farm located within the Navajo Indian Irrigation Project (“NIIP”). NAPI grows commercial crops such as beans, corn, wheat, alfalfa and potatoes. NAPI sells its finished crops to customers in various agricultural markets. The NAPI farm cannot support commercial farming in its natural state and requires irrigation and the types of agricultural products and service that Wilbur-Ellis provides in order to be successful.

To satisfy the first requirement, irrigation on the NAPI farm is provided through the NIIP, which diverts water from the Navajo Dam for irrigated agriculture. The Navajo Dam diverts water to a canal that delivers water to federally-designated Navajo farmlands, including the NAPI farm. The canal carries water through a series of tunnels, siphons and pumping stations to lateral ditches that irrigate growing crops.

As for the second requirement, lands within the NAPI farm can be farmed only for certain crops and only if the soil is properly conditioned and maintained. The rocky ground at the NAPI farm, for example, is generally alkaline (the pH is typically between 8.0 and 8.5). Similarly, parts of the farm harbor high concentrations of Nematodes (the predatory nematodes are microscopic worms that burrow into a plant's root system and damage the roots). The principal defect of the desert soil at NAPI, however, is the lack of the organic matter needed to grow commercial crops. Because of the marginal condition of the soil, the soil must be augmented with organic inputs. Typical macro- and micronutrients, for example, include nitrogen (N), phosphorus (P), potassium (K), sulfur (S), calcium (Ca) and magnesium (Mg). Essential micronutrients include zinc (Zn), iron (Fe), manganese (Mn), copper (Cu), boron (B), molybdenum (Mo), chloride (Cl) and nickel (Ni). Wilbur-Ellis sells the macro- and micronutrients needed to grow commercial crops on the NAPI farm.

Before nutrients can be distributed on NAPI's crops, Wilbur-Ellis must determine what nutrients NAPI's crops need and in what amounts. Wilbur-Ellis and NAPI evaluate the condition of the soil. After analyzing the soil chemistry and surrounding environmental factors at the NIIP Agricultural Testing and Research Laboratory (“ATRL”), Wilbur-Ellis custom blends fertilizer in specified ratios of macro- and micronutrients (and other useful soil conditioners). Wilbur-Ellis might, for example, order an “N-P-K” (Nitrogen-Phosphorous-Potassium) blend to be spread on NAPI's crops. The crop plants must also be analyzed for the presence of fungi and crop pests. Wilbur-

Ellis selects and distributes fungicides or pesticides to treat NAPI crops that show signs of treatable infestations or blight.

The nutrients in fertilizers are absorbed into the plants. The roots of plants, for example, must take up Nitrogen during the course of a growing season. Nitrogen is one of four chemical building blocks necessary for plants to manufacture proteins (carbon, hydrogen, and oxygen are the others). Plants use amino-based proteins to build plant cells, such as chloroplasts, which photosynthesize natural light into plant starches, or Sclerenchyma cells, which help produce plant fibers. Without sufficient Nitrogen, a plant turns yellow and withers in the field. The amount of Nitrogen that a plant absorbs is between 1.5% and 2.5% of the total volume of the mature plant. *See Jensen & Kavlian, PLANT PHYSIOLOGY 193, Table 10-1 (1969).*

The amount of Nitrogen and other essential nutrients that crops require is substantial. Wheat, one of NAPI's regular crops, absorbs approximately one pound of Nitrogen for each 30 pounds of wheat harvested at season's end. Likewise, Corn, another common NAPI crop, consumes 125 pounds of the macronutrient Potassium for each 100 bushels of corn. The same bushel of corn will also consume 35 pounds of Calcium and 30 pounds of Manganese. To meet the plant's need for essential nutrients like Nitrogen or Potassium, Wilbur-Ellis must apply nutrients to NAPI's crops several times during the course of a growing season.

In FY2020, NAPI purchased goods and services from Wilbur-Ellis in the total amount of \$7,682,364.90. If Wilbur-Ellis were subject to a 10% sales tax in FY2020, NAPI would be required to pay \$768,236.49 in taxes for such goods and services. If Legislation No. 0111-21 is enacted in its present form, NAPI will be left with two undesirable choices: (1) they can either absorb the tax cost so their pricing in the marketplace will remain competitive, which will impair their overall profitability, or (2) increase the price of their crops, which will make them uncompetitive in the global marketplace.

Finally, the Navajo Nation must consider how other jurisdictions provide sales tax exemptions for the agriculture industry. The challenges facing the agriculture industry are well understood by jurisdictions where they are located. Commercial agriculture is generally provided preferential treatment in many aspects as these jurisdictions work to protect these local farming operations because they are an important source of jobs, related tax revenues and often a source of economic growth. Sales tax exemptions on agricultural products and services is one area of almost universal preference in the U.S. Examples include:

- The Arkansas General Assembly's Tax Reform and Relief Legislative Task Force held meetings in 2018 to examine, among other items, the sales and use tax exemptions that directly impact agriculture. They concluded that the exemptions would remain in force because if they were removed, they would represent a tremendous new and burdensome tax on the agricultural industry, which is the state's top industry. Agricultural Council of Arkansas, Arkansas Legislative Committee Examines Sales Tax Exemptions, posted on Mar. 22, 2018, available at <http://agcouncil.net/2018/03/arkansas-legislative-committee-examines-sales-tax-exemptions/>.

- Colorado's legislature reviewed various tax breaks for appropriateness and their study found that their Agricultural Inputs Exemption ensures that the sales tax is only applied to purchases made by the final consumer of the crop products which provides for "even" tax treatment, helps reduce double taxation and tax pyramiding, maintains fair competition among businesses and promotes transparency in the tax system. Colorado Office of the State Auditor, Agricultural Inputs Sales Tax Exemptions, Evaluation Summary Jan. 2019, available at https://leg.colorado.gov/sites/default/files/images/04_agricultural_inputs.pdf.
- Arizona recently passed new legislation to exempt similar agricultural products and services. The reasons cited include that without the exemption, the added sales taxes are unfair to those who grow food and to the people across the country who consume these food items as this tax will be passed along to the end consumer, effectively making the tax paid by the farmer a tax on the poor. Arizona Daily Star, Arizona Lawmakers Vote to Exempt Farmers from Paying Sales Taxes on Pesticides for Food Crops, Feb. 25, 2019, available at https://tucson.com/news/local/arizona-lawmakers-vote-to-exempt-farmers-from-paying-sales-taxes/article_9fc42e51-537c-5bf8-9824-2370670381b7.html.
- In New Mexico, the state legislature supports the continued exemption as a way to facilitate agriculture-related production in the state. New Mexico Taxation and Revenue Department, New Mexico Agricultural Business Tax Deductions and Exemptions Industry Specific Incentive, available at <https://www.nmmainstreet.org/pdfs/TaxCredits/nm-agricultural.pdf>.

To further illustrate this point and demonstrate how the states that border the Navajo Nation implement the overall agricultural policy and exempt agricultural products and services from sales tax, we can look at the tax code in these states:

- New Mexico exempts a taxpayer's receipts from, among other things, "selling seeds, roots, bulbs, plants, soil conditioners, fertilizers, insecticides, germicides, insects used to control populations of other insects, fungicides or weedicides or water for irrigation purposes" to farming operations. NMSA 1978, sec. 7-9-58. The New Mexico exemption includes "receipts from threshing, cleaning, growing, cultivating or harvesting agricultural products... for growers." NMSA 1978, sec. 7-9-58.
- Arizona similarly exempts "[s]eeds, seedlings, roots, bulbs, liners, transplants, cuttings, soil, and plant additives, agricultural minerals, auxiliary soil and plant substances, micronutrients, fertilizers, insecticides, herbicides, fungicides, soil fumigants, desiccants, rodenticides, adjuvants, plant nutrients and plant growth regulators to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state." A.R.S. Sec. 42-5061(33), as amended by HB 2275 (2019).

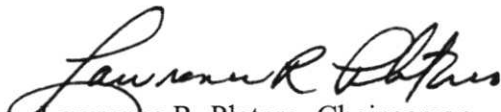
- Utah broadly exempts "sales of tangible personal property or a product transferred electronically used or consumed primarily and directly in farming operations." Utah Code Ann. § 59-12-104(18).

In these bordering states and almost all the other states where NAPI might sell its crops, agricultural products and services (fertilizers, pesticides and seeds) used in commercial agriculture are exempt from tax.

The proposed amendments to the Navajo Nation Sales Tax at 14 N.N.C. §601-§624 presented in Legislation No. 0111-21 will have a devastating effect on the overall profitability and viability of NAPI. Given that NAPI was not consulted during the development of these amendments, NAPI requests that Legislation No. 0111-21 be tabled pending further review and input from the NAPI Board of Directors, NAPI Management and the agricultural industry operating on the Navajo Nation. It is imperative that the Navajo Nation take into consideration the overall impact that the proposed amendments of Legislation No. 0111-21 will have on NAPI and other agricultural businesses operating on the Navajo Nation. NAPI is available to participate in a meeting with the Office of Navajo Tax Commission, Navajo Tax Commission, Resources and Development Committee, Law and Order Committee, Budget and Finance Committee, Naabik'íyáti Committee and the Navajo Nation Council to provide additional information in support of these comments.

We ask that you take note of the comments we have presented in this letter during your review and consideration of the proposed Legislation No. 0111-21. If you have any questions or concerns regarding this letter, please contact the NAPI Chief Executive Officer, Dave Zeller at 505-566-2600. Thank you.

Sincerely,



Lawrence R. Platero, Chairperson
NAPI Board of Directors

cc: Martin E. Ashley, Executive Director, Office of Navajo Tax Commission
Mark Graham, Chairperson, Navajo Tax Commission
Hon. Members of the 24th Navajo Nation Council
NAPI Board of Directors
Dave Zeller, Chief Executive Officer, NAPI
file

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

LEGISLATION NO.: 0111-21

SPONSOR: Honorable Jamie Henio

TITLE: An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabik'iyáti Committees, and the Navajo Nation Council; Amending the Navajo Nation Sales Tax at 24 N.N.C. §601-624

Posted: July 09, 2021 at 4:27 PM

5 DAY Comment Period Ended: July 14, 2021

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Comments/Recommendations	1) Carlos Deal

VSRedhorse

**Legislative Tracking Secretary
Office of Legislative Services**

August 20, 2021 8:30 AM

Date/Time

Untitled

Carlos Deal <navajocooking1@gmail.com>

Thu 8/19/2021 11:41 PM

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

I ask my elected leaders to table Legislation 0111-21 so that:

The public can discuss the economic impact of Legislation 0111-21 on the Navajo small business community and whether or not the small business impact neutralizes the proposed economic benefit,

The Navajo Tax Commission can host a public forum with and for the small business community to communicate the key issue and seek solutions with the business community,

The Navajo Tax Commission can explore and present alternative solutions that could incentivize Navajo business tax payments.

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

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

LEGISLATION NO.: 0111-21

SPONSOR: Honorable Jamie Henio

TITLE: An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabik'iyáti Committees, and the Navajo Nation Council; Amending the Navajo Nation Sales Tax at 24 N.N.C. §601-624

Posted: July 09, 2021 at 4:27 PM

5 DAY Comment Period Ended: July 14, 2021

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	1. Becenti Chapter
Comments/Recommendations	1. Lawrence R. Platero, <i>Chairperson NAPI Board of Directors</i>

VSRedhorse

**Legislative Tracking Secretary
Office of Legislative Services**

August 24, 2021 ; 11:02 PM
Date/Time



The Navajo Nation Becenti Chapter
T'oo'di'tsin (Barren of the trees) Jidi'hadit'i'ih (Antelope lookout)



Jonathan Perry
PRESIDENT

Marjorie Lantana
VICE-PRESIDENT

Arlene A. Arthur
SECRETARY/TREASURER

Mikelle Lantana
LAND BOARD

Mark Freeland
COUNCIL DELEGATE

VACANT
CHAPTER CSC

VACANT
CHAPTER AMS

P.O. Box 708, Crownpoint, NM 87313 Website: becenti.navajochapters.org Email: becenti@navajochapters.org Phone: (505) 786-2283 Fax: (505) 786-2285

Resolution of Becenti Chapter
BCAUG-21-111

RESOLUTION OPPOSING NAVAJO NATION COUNCIL LEGISLATION 111-21: AN ACT RELATING TO THE RESOURCES AND DEVELOPMENT, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIKI'YATI COMMITTEES, AND NAVAJO NATION COUNCIL; AMENDING THE NAVAJO NATION SALES TAX AT 24 N.N.C. §601 – §624.

WHEREAS:

1. Pursuant to Navajo Nation Council Resolution CJY-20-55, the Becenti Chapter is a certified chapter of the Navajo Nation Government and is vested with certain authorities to address and resolve local matters in the best interest of the community members, and coordinate with or refer appropriate subject matters to the Navajo Nation, McKinley County, State of New Mexico, and the US Federal Governments; and
2. Pursuant to Navajo Nation Council Resolution CAP-34-98 Local Governance Act "LGA", allows chapter governments to make decisions over local matters, this authority in the long run, will improve community decision making, allow communities to excel and flourish, enable Navajo leaders to lead towards a prosperous future, and improve the strength and sovereignty of the Navajo Nation; and
3. Navajo Nation Legislation 111-21: An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabiki'yati Committees, and the Navajo Nation Council; Amending the Navajo Nation Sales Tax 24 N.N.C §601 – §624 was introduced to action by Honorable Council Delegate Jamie Henio, and is currently going through the Legislative Process to be considered for approval; and
4. Becenti Chapter is concerned with the language within the legislation that states that the Navajo Nation Sales Tax will increase from 4% to 10%, this has caused concern by community members as income is low and at a fixed rate for most senior citizens within the community; and
5. The Navajo Nation is in the midst of the COVID-19 Pandemic and there has been major impacts financially to a majority of the community members of Becenti Chapter, and an increase in sales tax will be more of an economic burden to many households; and
6. Becenti Chapter is expressing concern that there is no communication by the Navajo Nation Council to extend education and coordination with the 110 Navajo Nation Chapters, and this is a crucial step in government transparency and accountability; and

7. Becenti Chapter is concern with the impacts to the overall economic environment of the Navajo Nation and what long term impacts the foregoing resolution will have on businesses, revenues, and other financial transactions that rely on Navajo Nation Sales Tax.

NOW, THEREFORE, LET IT BE RESOLVED THAT:

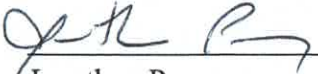
1. Becenti Chapter opposes Navajo Nation Legislation 111-21: An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabiki'yati Committees, and Navajo Nation Council; Amending the Navajo Nation Sales Tax 24 N.N.C. §601 – §624.
2. Becenti Chapter recommends the 24th Navajo Nation Council and the Office of President and Vice-President to not approve/consider Legislation 111-21 at this time until a full economic impact analysis is completed and public education is properly done.

CERTIFICATION


WE HEREBY CERTIFY, that this foregoing resolution was duly considered by the Becenti Chapter at a duly called chapter meeting at Becenti Chapter, at which a legal quorum was present and the same was passed by a vote of 9 in favor, 0 in opposition, and 0 abstaining on this 16th day of August 2021.

Motion: Victoria Henry

Second: Marilyn L. Becenti


Jonathan Perry,
Becenti Chapter President

Marjorie Lantana,
Becenti Chapter Vice-President


Arlene Arviso-Arthur
Becenti Chapter Secretary/Treasurer

Mark Freeland,
Navajo Nation Council Delegate



NAVAJO AGRICULTURAL PRODUCTS INDUSTRY

P.O. Drawer 1318
Farmington, NM 87499
Telephone: (505) 566-2600
Fax: (505) 960-9458
www.navajopride.com

August 10, 2021
21-HQ-54

Sent via Email

Rickie Nez, Chairperson
Resources and Development Committee
Email: rickienez@navajo-nsn.gov

Eugenia Charles-Newton, Chairperson
Law and Order Committee
Email: echarles-newton@navajo-nsn.gov

Jamie Henio, Chairperson
Budget and Finance Committee
Email: jhenio@navajo-nsn.gov

Seth Damon, Chairperson
Naabik'iyáti Committee
Email: sdamon@navajo-nsn.gov

Seth Damon, Speaker
Navajo Nation Council
Email: sdamon@navajo-nsn.gov

Re: Comments Regarding Legislation No. 0111-21 Sponsored by Jamie Henio, entitled “An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabik’iyáti Committees, and the Navajo Nation Council; Amending the Navajo Nation Sales Tax at 14 N.N.C. § 601-§624.”

Dear Chairpersons and Committee Members:

Please accept these comments from the Navajo Agricultural Products Industry (“NAPI”) Board of Directors and Executive Staff regarding Legislation No. 0111-21 sponsored by Jamie Henio and co-sponsored by Jimmy Yellowhair. This letter summarizes the issues that should be considered when evaluating this proposed legislation to amend the Navajo Nation Sales Tax at 14 N.N.C. §601-§624 and the impact that such amendments may have on NAPI’s commercial agricultural operations.

NAPI is a Navajo Nation enterprise originally established in 1970 pursuant to Navajo Nation Council Resolution #ACAP-123-70 and continued in 1997 pursuant to 5 N.N.C. §§ 1601 et seq. to “operate a profitable commercial farm in accordance with its plan of operation and applicable laws and regulations, separate and distinct from the Navajo Indian Irrigation Project.” 5 N.N.C. § 1602. NAPI currently operates a commercial farm of 72,000 acres of irrigable land (the “NAPI Farm”). NAPI operates under the legislative oversight of the Resources and Development Committee (“RDC”) (formerly known as the Economic Development Committee) of the Navajo Nation Council. 5 N.N.C. § 1604.

The mission of NAPI is to continue the legacy of Navajo farming, producing superior products, practicing stewardship and creating value for our people. *See* NAPI Plan of Operation, at Art. 3, adopted by Resolution No. RDCS-049-19 (Sept. 27, 2019). The vision of NAPI is farming sustainably across generations to cultivate a healthy Nation. *Id.*

NAPI operates pursuant to a Plan of Operation approved by the Navajo Nation Council on January 28, 2010, NNC Resolution #CJA-05-10, and most recently amended by the Resources and Development Committee on September 27, 2019, by Resolution No. RDCS-049-19. NAPI is governed by a five (5) member Board of Directors. The NAPI Board is granted broad powers by the Plan of Operation to exercise overall responsibility for the affairs of NAPI, giving usual and essential latitude to the Chief Executive Officer.

Since NAPI’s inception, NAPI has not been required to pay taxes to the Navajo Nation. Rather, NAPI has in all instances met the Exemptions and Exclusions at 14 N.N.C. §609(C)(2), which states in pertinent part as follows:

The tax imposed by this Chapter does not apply to gross receipts generated directly by the following:

(2) Sales related to agricultural, farming, or livestock activities conducted within the Navajo Nation.

The proposed amendments set forth in Legislation No. 0111-21 seek to exclude NAPI from meeting this exemption and exclusion. Specifically, the proposed amendments state:

The tax imposed by this Chapter does not apply to gross receipts generated directly by the following:

(2) Sales of Agricultural Products by Agricultural Producers engaged in Traditional Navajo agricultural, farming, and livestock activities conducted within the Navajo Nation. This exemption shall not apply to sales by commercial Agricultural Producers.

Under 14 N.N.C. § 607(a), the proposed amendments define “Agricultural Producers” as “Persons who are farmers, ranchers, growers, and producers on agricultural lands within the Navajo Nation, who grow, harvest, raise, or prepare for market, and sell their own Agricultural Products within

the Navajo Nation.” Under 14 N.N.C. § 607(B), the proposed amendments also define “Agricultural Products” as:

...crops such as vegetables, fruits, grains, grasses, roots, and legumes, that are grown from cultivating soil and harvested for use as food for humans and animals, as fiber for clothing and other products, or for production of fuel; livestock such as cattle, sheep, goats, buffalo, hogs, and poultry, raised for purposes of production of meat, dairy, eggs, and other food products for human consumptions, or for production of wool, skins, and pelts for clothing and other purposes; livestock such as horses and mules for work on a ranch or farm; farm-raised fish; bees and honey; trees grown for production of fruit, lumber, fuel, and fiber; flowers cultivated for sale; and other similar natural plant or animal products.

Although NAPI falls within these definitions, NAPI is specifically prevented from qualifying for the exemption and exclusion that is provided by 14 N.N.C. §609(C)(2) based on the last sentence of the subsection that states, “[t]his exemption shall not apply to sales by commercial Agricultural Producers.”

The majority of NAPI’s sales are made to the Navajo Nation government, Navajo Nation chapters and Navajo Nation membership. NAPI grows a variety of quality forage, feed, and food products under the Navajo Pride brand as retail and wholesale. The Region 2 Store is located at NAPI and sells all Navajo Pride products to accommodate local customers. Subjecting NAPI to a 10% sales tax will have a significant impact on NAPI’s overall revenues, which will eliminate NAPI’s ability to pay dividends to the Navajo Nation each year and will lead to price increases for NAPI’s products to consumers effectively passing the tax onto consumers. For example, in FY2020, NAPI’s sales on the Navajo Nation generated a total of \$41,136,743. If NAPI were subject to a 10% sales tax in FY2020, NAPI would be required to increase all prices for all goods by 10%, which would lead to a total cost to the consumer of \$45,250,417.30.

Despite being the largest agricultural producer on the Navajo Nation, NAPI was not consulted by the Office of Navajo Tax Commission or the Navajo Tax Commission concerning the proposed amendments to the Navajo Nation Sales Tax at 14 N.N.C. §601-§624. NAPI was also not provided an opportunity to participate at any time during the development of these amendments and did not receive notice until after Legislation No. 0111-21 was duly approved by the RDC. As a wholly-owned enterprise of the Navajo Nation, NAPI should have been provided an opportunity to participate in the development of these amendments and respond to the overall impact that such amendments would have on NAPI’s activities on the Navajo Nation.

Subjecting all commercial Agricultural Producers to a 10% sales tax will also affect NAPI’s existing contracts with other businesses. For example, NAPI currently purchases inputs from other businesses that provide services to NAPI. Currently, such businesses qualify for the exemption and exclusion provisions and/or the sale for resale exemptions and are therefore, not subject to the Navajo Nation sales tax. However, by amending the definition of “sale for resale” and inserting the last sentence of 14 N.N.C. §609(C)(2), which states, “[t]his exemption shall not apply to sales by commercial Agricultural Producers”, such businesses will also be subject to the 10% sales tax.

The Navajo Nation Tax laws do not prevent the pass through of tax obligations onto a buyer; meaning that such businesses will likely add the Navajo Nation 10% sales tax onto all contracts with NAPI moving forward, which inevitably will lead to NAPI paying for the taxes for services and supplies it receives from other businesses.

To illustrate, NAPI currently utilizes products and services offered by Wilbur-Ellis. Pursuant to its Plan of Operation, NAPI purchases seed, fertilizer, pesticides, and other products and services for agricultural production (“agricultural products and services”) from agricultural supply companies, including Wilbur-Ellis. The sales of agricultural products and services are exclusively for use by NAPI in the production of NAPI agricultural products on the NAPI farm located on the Navajo Nation.

Wilbur-Ellis sells fertilizers, pesticides, and seeds to NAPI. NAPI uses Wilbur-Ellis' agricultural products and services to grow crops on the NAPI farm located within the Navajo Indian Irrigation Project (“NIIP”). NAPI grows commercial crops such as beans, corn, wheat, alfalfa and potatoes. NAPI sells its finished crops to customers in various agricultural markets. The NAPI farm cannot support commercial farming in its natural state and requires irrigation and the types of agricultural products and service that Wilbur-Ellis provides in order to be successful.

To satisfy the first requirement, irrigation on the NAPI farm is provided through the NIIP, which diverts water from the Navajo Dam for irrigated agriculture. The Navajo Dam diverts water to a canal that delivers water to federally-designated Navajo farmlands, including the NAPI farm. The canal carries water through a series of tunnels, siphons and pumping stations to lateral ditches that irrigate growing crops.

As for the second requirement, lands within the NAPI farm can be farmed only for certain crops and only if the soil is properly conditioned and maintained. The rocky ground at the NAPI farm, for example, is generally alkaline (the pH is typically between 8.0 and 8.5). Similarly, parts of the farm harbor high concentrations of Nematodes (the predatory nematodes are microscopic worms that burrow into a plant's root system and damage the roots). The principal defect of the desert soil at NAPI, however, is the lack of the organic matter needed to grow commercial crops. Because of the marginal condition of the soil, the soil must be augmented with organic inputs. Typical macro- and micronutrients, for example, include nitrogen (N), phosphorus (P), potassium (K), sulfur (S), calcium (Ca) and magnesium (Mg). Essential micronutrients include zinc (Zn), iron (Fe), manganese (Mn), copper (Cu), boron (B), molybdenum (Mo), chloride (Cl) and nickel (Ni). Wilbur-Ellis sells the macro- and micronutrients needed to grow commercial crops on the NAPI farm.

Before nutrients can be distributed on NAPI's crops, Wilbur-Ellis must determine what nutrients NAPI's crops need and in what amounts. Wilbur-Ellis and NAPI evaluate the condition of the soil. After analyzing the soil chemistry and surrounding environmental factors at the NIIP Agricultural Testing and Research Laboratory (“ATRL”), Wilbur-Ellis custom blends fertilizer in specified ratios of macro- and micronutrients (and other useful soil conditioners). Wilbur-Ellis might, for example, order an “N-P-K” (Nitrogen-Phosphorous-Potassium) blend to be spread on NAPI's crops. The crop plants must also be analyzed for the presence of fungi and crop pests. Wilbur-

Ellis selects and distributes fungicides or pesticides to treat NAPI crops that show signs of treatable infestations or blight.

The nutrients in fertilizers are absorbed into the plants. The roots of plants, for example, must take up Nitrogen during the course of a growing season. Nitrogen is one of four chemical building blocks necessary for plants to manufacture proteins (carbon, hydrogen, and oxygen are the others). Plants use amino-based proteins to build plant cells, such as chloroplasts, which photosynthesize natural light into plant starches, or Sclerenchyma cells, which help produce plant fibers. Without sufficient Nitrogen, a plant turns yellow and withers in the field. The amount of Nitrogen that a plant absorbs is between 1.5% and 2.5% of the total volume of the mature plant. *See Jensen & Kavlian, PLANT PHYSIOLOGY 193, Table 10-1 (1969).*

The amount of Nitrogen and other essential nutrients that crops require is substantial. Wheat, one of NAPI's regular crops, absorbs approximately one pound of Nitrogen for each 30 pounds of wheat harvested at season's end. Likewise, Corn, another common NAPI crop, consumes 125 pounds of the macronutrient Potassium for each 100 bushels of corn. The same bushel of corn will also consume 35 pounds of Calcium and 30 pounds of Manganese. To meet the plant's need for essential nutrients like Nitrogen or Potassium, Wilbur-Ellis must apply nutrients to NAPI's crops several times during the course of a growing season.

In FY2020, NAPI purchased goods and services from Wilbur-Ellis in the total amount of \$7,682,364.90. If Wilbur-Ellis were subject to a 10% sales tax in FY2020, NAPI would be required to pay \$768,236.49 in taxes for such goods and services. If Legislation No. 0111-21 is enacted in its present form, NAPI will be left with two undesirable choices: (1) they can either absorb the tax cost so their pricing in the marketplace will remain competitive, which will impair their overall profitability, or (2) increase the price of their crops, which will make them uncompetitive in the global marketplace.

Finally, the Navajo Nation must consider how other jurisdictions provide sales tax exemptions for the agriculture industry. The challenges facing the agriculture industry are well understood by jurisdictions where they are located. Commercial agriculture is generally provided preferential treatment in many aspects as these jurisdictions work to protect these local farming operations because they are an important source of jobs, related tax revenues and often a source of economic growth. Sales tax exemptions on agricultural products and services is one area of almost universal preference in the U.S. Examples include:

- The Arkansas General Assembly's Tax Reform and Relief Legislative Task Force held meetings in 2018 to examine, among other items, the sales and use tax exemptions that directly impact agriculture. They concluded that the exemptions would remain in force because if they were removed, they would represent a tremendous new and burdensome tax on the agricultural industry, which is the state's top industry. Agricultural Council of Arkansas, Arkansas Legislative Committee Examines Sales Tax Exemptions, posted on Mar. 22, 2018, available at <http://agcouncil.net/2018/03/arkansas-legislative-committee-examines-sales-tax-exemptions/>.

- Colorado's legislature reviewed various tax breaks for appropriateness and their study found that their Agricultural Inputs Exemption ensures that the sales tax is only applied to purchases made by the final consumer of the crop products which provides for "even" tax treatment, helps reduce double taxation and tax pyramiding, maintains fair competition among businesses and promotes transparency in the tax system. Colorado Office of the State Auditor, Agricultural Inputs Sales Tax Exemptions, Evaluation Summary Jan. 2019, available at https://leg.colorado.gov/sites/default/files/images/04_agricultural_inputs.pdf.
- Arizona recently passed new legislation to exempt similar agricultural products and services. The reasons cited include that without the exemption, the added sales taxes are unfair to those who grow food and to the people across the country who consume these food items as this tax will be passed along to the end consumer, effectively making the tax paid by the farmer a tax on the poor. Arizona Daily Star, Arizona Lawmakers Vote to Exempt Farmers from Paying Sales Taxes on Pesticides for Food Crops, Feb. 25, 2019, available at https://tucson.com/news/local/arizona-lawmakers-vote-to-exempt-farmers-from-paying-sales-taxes/article_9fc42e51-537c-5bf8-9824-2370670381b7.html.
- In New Mexico, the state legislature supports the continued exemption as a way to facilitate agriculture-related production in the state. New Mexico Taxation and Revenue Department, New Mexico Agricultural Business Tax Deductions and Exemptions Industry Specific Incentive, available at <https://www.nmmainstreet.org/pdfs/TaxCredits/nm-agricultural.pdf>.

To further illustrate this point and demonstrate how the states that border the Navajo Nation implement the overall agricultural policy and exempt agricultural products and services from sales tax, we can look at the tax code in these states:

- New Mexico exempts a taxpayer's receipts from, among other things, "selling seeds, roots, bulbs, plants, soil conditioners, fertilizers, insecticides, germicides, insects used to control populations of other insects, fungicides or weedicides or water for irrigation purposes" to farming operations. NMSA 1978, sec. 7-9-58. The New Mexico exemption includes "receipts from threshing, cleaning, growing, cultivating or harvesting agricultural products... for growers." NMSA 1978, sec. 7-9-58.
- Arizona similarly exempts "[s]eeds, seedlings, roots, bulbs, liners, transplants, cuttings, soil, and plant additives, agricultural minerals, auxiliary soil and plant substances, micronutrients, fertilizers, insecticides, herbicides, fungicides, soil fumigants, desiccants, rodenticides, adjuvants, plant nutrients and plant growth regulators to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state." A.R.S. Sec. 42-5061(33), as amended by HB 2275 (2019).

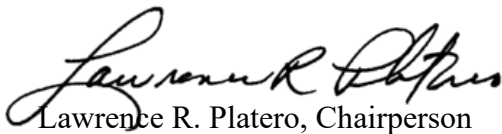
- Utah broadly exempts "sales of tangible personal property or a product transferred electronically used or consumed primarily and directly in farming operations." Utah Code Ann. § 59-12-104(18).

In these bordering states and almost all the other states where NAPI might sell its crops, agricultural products and services (fertilizers, pesticides and seeds) used in commercial agriculture are exempt from tax.

The proposed amendments to the Navajo Nation Sales Tax at 14 N.N.C. §601-§624 presented in Legislation No. 0111-21 will have a devastating effect on the overall profitability and viability of NAPI. Given that NAPI was not consulted during the development of these amendments, NAPI requests that Legislation No. 0111-21 be tabled pending further review and input from the NAPI Board of Directors, NAPI Management and the agricultural industry operating on the Navajo Nation. It is imperative that the Navajo Nation take into consideration the overall impact that the proposed amendments of Legislation No. 0111-21 will have on NAPI and other agricultural businesses operating on the Navajo Nation. NAPI is available to participate in a meeting with the Office of Navajo Tax Commission, Navajo Tax Commission, Resources and Development Committee, Law and Order Committee, Budget and Finance Committee, Naabik'íyáti Committee and the Navajo Nation Council to provide additional information in support of these comments.

We ask that you take note of the comments we have presented in this letter during your review and consideration of the proposed Legislation No. 0111-21. If you have any questions or concerns regarding this letter, please contact the NAPI Chief Executive Officer, Dave Zeller at 505-566-2600. Thank you.

Sincerely,



Lawrence R. Platero, Chairperson
NAPI Board of Directors

cc: Martin E. Ashley, Executive Director, Office of Navajo Tax Commission
Mark Graham, Chairperson, Navajo Tax Commission
Hon. Members of the 24th Navajo Nation Council
NAPI Board of Directors
Dave Zeller, Chief Executive Officer, NAPI
file

**LAW AND ORDER COMMITTEE
24TH NAVAJO NATION COUNCIL**

THIRD YEAR 2021

COMMITTEE REPORT

Mr. Speaker,

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

Legislation No. 0111-21: An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabik'iyati' Committees, and the Navajo Nation Council; Amending the Navajo Nation Sales Tax at 24 N.N.C. §601-§624 – *Sponsors: Honorable Jamie Henio/Honorable Jimmy Yellowhair*

Has had it under consideration and reports the same with the recommendation that it DO NOT PASS with no amendment

A motion was made and lack of a second, this legislation moves forward with the guidance from Office of Legislative Counsel

And thereafter referred to Budget and Finance Committee.

Respectfully submitted,



Otto Tso, Vice Chairman
Law and Order Committee
24th Navajo Nation Council

Date: August 23, 2021

Main Motion:

Motion : Honorable Eugenia Charles-Newton
Second : None
Vote : 0-0-0

LAW AND ORDER COMMITTEE
Regular Meeting
August 23, 2021

Legislation No. 0111-21: An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabik'iyati' Committees, and the Navajo Nation Council; Amending the Navajo Nation Sales Tax at 24 N.N.C. §601-§624 – *Sponsors: Honorable Jamie Henio/Honorable Jimmy Yellowhair*

VOTE TALLY SHEET:

Main Motion:

Motion: Honorable Eugenia Charles-Newton

Second: None

Vote: 0-0-0

Yea:

Nay:

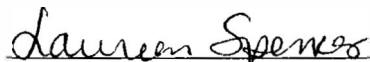
Not Voting:

Excused:

Absent:



Otto Tso, Vice Chairman
Law and Order Committee
24th Navajo Nation Council



Laureen Spencer, Legislative Advisor
Office of Legislative Services