



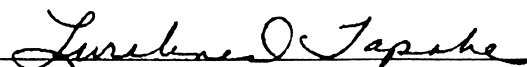
**NAVAJO NATION DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**

HARRISON TSOSIE  
*Attorney General*

DANA BOBROFF  
*Deputy Attorney General*

MEMORANDUM

TO: Leonard Chee, Division Director  
Division of Community Development

FROM:   
Luralene D. Tapahe, Asst. Attorney General  
Economic & Community Development Unit/NNDOJ

DATE: February 11, 2013

SUBJECT: **CHAPTER USES OF FUNDS FROM THE NAVAJO NATION SALES TAX  
TRUST FUND FOR VARIOUS PURPOSES**

I have received your Request for Services regarding the above-mentioned issue. Specifically, you have asked: can money from the Navajo Nation Sales Tax Trust Fund ("Fund") be used for student scholarships, veterans (housing assistance and travel costs), stipend payments for grazing committee members or training, and travel, training, cell phones and equipment (ipads, laptops, etc.) for Chapter officials (and presumably also for Chapter employccs). The short answer to all of these questions is "no."

First, the Navajo Nation Council enacted the Sales 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. 24 N.N.C. §602. Seventy-five percent (75%) 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. 24 N.N.C. §620C.

In the field of taxation, a tax is utilized by a government to raise funds for public purposes and to allow the government to fund essential governmental services that are provided to the public. A tax is for a public purpose where it is for the support of government, or for any of the recognized objects of government, or where it will promote the welfare of a state or local government and its citizens. For a purpose to be "public" or "governmental," such use must provide benefits in common for the community - not benefits for particular persons or interests. The Navajo Sales Tax Statute is quite consistent with the public purpose rationale where it states

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3. stipend payments for grazing committee members – no, this is specifically prohibited under the BIPM
4. training, and travel, training, cell phones and equipment (ipads, laptops, etc.) for chapter officials and employees – no, these types of payments and goods can be considered a type of “compensation” beyond what is already provided for in the approved Navajo Nation Council budget; such things that are not cash payments directly to a chapter official or employee are still “compensation” in a non-monetary form. The fact that the disallowable expenses section of the BIPM mentions the term “stipends” which is a money payment, and also mentions the term “compensation” which can mean NON-monetary things, clearly means that the Budget and Finance Committee intended to prohibit NON-monetary items when it approved the BIPM.

I hope that this memo has clarified your concerns. I understand that some chapters may not agree with this position. However, consistent with general principles of law, a government’s expenditure of *tax* revenue, as opposed to other types of funds, is always treated with close scrutiny. The Navajo Nation’s use of tax revenue must be no different if the Nation’s sovereign authority to impose the tax is to remain intact. Also, chapters can seek other sources of funds for the expenditures that you have mentioned. If you have any questions, I can be reached at my email address at [LTAPAHE@nndoj.org](mailto:LTAPAHE@nndoj.org).

LDT/ah/19

RESOLUTION OF THE  
BUDGET AND FINANCE COMMITTEE  
OF THE NAVAJO NATION COUNCIL

Approving the Navajo Nation Sales Tax Trust Fund  
Plan of Operation for Distributing Funds

WHEREAS:

1. Pursuant to 2 N.N.C. §§ 371 and 372(D), the Budget and Finance Committee is established and continues as a standing committee of the Navajo Nation Council with authority to protect the interests of the Navajo People through efficient use of funds, as well as through prudent management of financial reserves; and
2. Pursuant to 2 N.N.C. § 372(B)(4), the Budget and Finance Committee is authorized to coordinate and review fiscal activities of the Navajo Nation and its chapters; and
3. Pursuant to 2 N.N.C. § 374(B), the Budget and Finance Committee is authorized to require reports from and monitor the financial performance of the Navajo Nation and its chapters; and
4. By Resolution CO-84-01, the Navajo Nation Council approved the Navajo Nation Sales Tax with an effective date of April 1, 2002, and that Tax is attached hereto as Exhibit A; and
5. Pursuant to Section 620(B) of that Tax, 100% of the net revenue generated from retail establishments shall be distributed to the specific chapter in which the retail sale occurred, so long as that chapter is governance-certified at the time of the sale; and
6. Pursuant to Section 620(C) of that Tax, 100% of the net revenue generated from retail establishments where no governance-certified chapter exists, shall be deposited in a trust fund and distributed pursuant to a plan of operation developed by the Office of Navajo Government Development and approved by the Budget and Finance Committee; and
7. The Budget and Finance Committee has determined that the Navajo Nation owes a higher duty of care to the chapters and the taxpayers to ensure the revenues generated by taxation, are adequately accounted for, as well as expended for infrastructure and economic development and governmental purposes; and
8. Pursuant to Section 620(C) of that Tax, the Office of Navajo Government Development, in coordination with the Office of the Tax Commission and the Budget and Finance Committee, conducted public hearings on the draft Navajo Nation Sales Tax Trust Fund Plan of Operation for Distributing Funds ("Plan of Operation"), and revised that Plan of Operation based on those hearings; and

Section 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) "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.

(B) "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.

(C) "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.

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

(E) "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

(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.

Section 610. CREDITS.

A person may take a credit against the tax imposed by this Chapter for taxes paid pursuant to any nondiscriminatory excise tax imposed by any duly established township or local government subunit, provided that revenues from such excise tax are utilized to provide essential governmental services.

Section 611. RESERVED.

Section 612. FILING OF RETURN.

(A) Each person must file a return indicating all sales from applicable gross receipts and the tax due under this Chapter for each period by the fifteenth day of the second month after the end of each calendar quarter. Returns are due on 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 Section 609, provided that the Office of the Navajo Tax Commission may require such person to file the information necessary to establish its exempt status.

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

Section 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.

Section 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

Navajo Nation Sales Tax Trust Fund  
Plan of Operation for Distributing Funds

Section 1: Adoption and Purpose

The Navajo Nation Sales Tax Trust Fund Plan of Operation for Distributing Funds is hereby adopted. Its purpose is to define how the Fund shall be structured and how distribution to the chapters shall occur. The distribution shall be agency-based so the revenue generated at retail establishments in an agency shall be shared among the chapters in that same agency.

Section 2: Declaration of Policy

The policy underlying this Plan of Operation is to legitimize the use of the tax by dedicating it to infrastructure and economic development, and other governmental purposes and to ensure that the revenue is accounted for.

Section 3: Deposits and Identification of Fund Accounts

The Office of the Navajo Tax Commission shall identify from which agency the tax revenue is derived and provide this information to the Office of the Controller, along with the amount of deposits. The Office of the Controller shall segregate the amounts into five (5) separate fund accounts, one for each agency.

Section 4: Distribution

A. One-hundred percent (100%) of the Fund shall be distributed to the chapters annually. The distributions shall be for infrastructure and economic development, as well as other governmental purposes as set forth in duly-approved chapter budgets.

B. The Division of Community Development is delegated administrative responsibility for the distributions which shall occur as follows: 50% shall be divided equally among the chapters within their respective agencies, and the remaining 50% shall be divided proportionately among the chapters based upon the percentage of voters registered in the chapter to the number of voters registered in the Navajo Nation as defined by the most current voter registration.

Section 5: Annual Audit and Report

The Navajo Nation shall include this Fund within its annual audit and report. The report shall be distributed to the Budget and Finance Committee and interested members of the Navajo public.

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7. The Budget and Finance Committee has determined that the Navajo Nation owes a higher duty of care to the chapters and the taxpayers to ensure the revenues generated by taxation, are adequately accounted for, as well as expended for infrastructure and economic development and governmental purposes; and
8. Pursuant to Section 620(C) of that Tax, the Office of Navajo Government Development, in coordination with the Office of the Tax Commission and the Budget and Finance Committee, conducted public hearings on the draft Navajo Nation Sales Tax Trust Fund Plan of Operation for Distributing Funds ("Plan of Operation"), and revised that Plan of Operation based on those hearings; and
9. The Budget and Finance Committee has determined that it is in the best interest of the Navajo Nation to adopt the Plan of

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Section 6: Misappropriated or Misused Funds

Misappropriated or misused funds by chapter staff or officials shall be prosecuted in the courts of the Navajo Nation, as well as by the Ethics and Rules Committee. Additionally, the Navajo Nation shall attempt to stop the misuse or misappropriation, as well as retrieve any money or value it can, pursuant to a policy to be developed by the Budget and Finance Committee.

Section 7: Amendments

Any section herein may be amended upon recommendation by the Office of Navajo Government Development and approval by the Budget and Finance Committee.