

PUBLIC NOTICE

PROPOSAL TO AMEND KAYENTA TOWNSHIP BUSINESS SALES TAX RATE

Pursuant to Section 2-107(C) of the Administrative Rules and Procedures Ordinance and Section 8-307 of the Business Sales Tax Ordinance (subchapter 3 of the Tax Ordinances), the Kayenta Township Commission (“Commission”) hereby provides notice of a proposed action to increase the Business Sales Tax from five percent (5%) to six percent (6%) by amending Sections 8.303 and 8.311(G) of the Business Sales Tax Regulations. The proposed amendments are as follows:

KAYENTA TOWNSHIP BUSINESS SALES TAX REGULATIONS

* * *

Section 8.303. Rate of Tax.

Effective ~~August 18, 2002~~ June 1, 2018, the rate of tax shall be ~~five percent (5%)~~ six percent (6%) of gross receipts. The ~~6%~~ 5% rate shall apply to all gross receipts received for goods sold or service performed after such date.

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Section 8.311. General.

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G. A vendor collecting tax from a purchaser shall keep and preserve suitable records and other books and accounts necessary to determine the tax collected for the statutorily prescribed limitation period.

1. If the sales invoice separately states the tax collected, the amount is the minimum amount that must be paid to the Township. If the stated amount is less than the 65.0% tax required, the vendor must pay the difference between the amount collected and the amount due. If the amount stated exceeds the ~~65.0%~~ tax due, the excess tax must be either refunded to the customer or sent to the Township as “Excess Tax Collected.”
2. If the tax is not separately stated or the words “tax included” appears on the sales invoice, the tax must be factored out of the amount of income received from that customer. The sales tax factor for ~~56.0%~~ is ~~0.04761905~~ 0.05660377. To calculate

the tax on invoices that do not separately state the tax, multiply the total taxable sale by the factor. If the sales tax is not separately stated on the invoice and collected from the customer, the business is liable for the factored tax due.

Public notice will be for a period of 30 days, commencing March 16, 2018. Within this 30-day period, interested parties may submit to the Commission for its consideration written comments, statements, arguments, and views (collectively “Comments”). Consideration of adoption of the amended Business Sales Tax Regulations will be on the Kayenta Township regular meeting agenda for May 14, 2018. Comments should be sent via U.S. Postal Service mail or electronic mail to:

Gabriel Yazzie, Town Manager
RE: BUSINESS SALES TAX REGULATIONS
Kayenta Township
P.O. Box 1490
Kayenta, AZ (Navajo Nation) 86033
gyazzie@kayentatownship-nsn.gov

If sending by electronic mail, the subject line should be “**Amendments to the Business Sales Tax Regulations.**”

The preamble (recitals) for a Commission resolution adopting the proposed amendment to the Business Sales Tax Regulations (if such is the Commission’s decision after considering public comment) is as follows:

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

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

3. Since 1996, by approval of the Navajo Nation Council for a Kayenta Tribal Pilot Sales Tax Project pursuant to Resolution No. CJA-3-96 (Jan. 19, 1996), the Kayenta Township has been administering a local business sales tax. The pilot sales tax provisions were eventually made permanent and codified in the Business Sales Tax Ordinance, Subchapter 3 of the Sales

Tax Ordinances, which was last amended on January 14, 2013 by Resolution No. KTCJA-02-13; and

4. Pursuant to Section 8-307 of the Business Sales Tax Ordinance, the Business Sales Tax is imposed at a rate of not less than three percent (3%), nor more than eight percent (8%), which is to be established by regulations promulgated by the Commission; and

5. Under the Business Sales Tax Regulations (“Regulations”) promulgated by the Commission, the Business Sales Tax is currently set at a rate of five percent (5%) of gross receipts; and

6. On January 24, 2018, by Resolution No. CJA-07-18, the Navajo Nation Council approved legislation increasing the Navajo Nation Sales Tax from five percent (5%) to six percent (6%), with the one percent (1%) increase to be dedicated to supporting fire and rescue services; and

7. The Commission has determined that the Kayenta Business Sales Tax should be increased from five percent (5%) to six percent (6%) by amendment of the Regulations in order to be consistent with the Navajo Nation sales tax and to support emergency and other important governmental services for the Kayenta Township; and

8. Proposed amendments to Sections 8.303 and 8.311(G) of the Regulations have been published in a Public Notice for thirty (30) days’ public comment in accordance with Section 2-107(C) of the Administrative Rules and Procedures Ordinance and Section 8-307 of the Business Sales Tax Ordinance (subchapter 3 of the Tax Ordinances), a copy of such Public Notice which is attached as Exhibit “A,” and the Commission has duly considered such comments in its decision today; and

9. Attached hereto as Exhibit “B” is a clean version of the Regulations, as amended pursuant to this Resolution.

**KAYENTA TOWNSHIP
BUSINESS SALES TAX REGULATIONS**

Section 8.301. Title.

This subchapter shall be known as the Business Sales Tax Regulations (“Regulations”).

History

KTCJN-36-04 (April 19, 2004)	The KTC approved the Regulations.
KTCS-73-11 (Sept. 12, 2011)	The KTC approved Amendment No. 1 to delete the tax administration provisions, which were incorporated into the Tax Administration Regulations.
KTCJA-02-13 (Jan. 14, 2013)	The KTC approved Amendment No. 2 to adopt certain technical amendments.
KTC _____ (_____, 2018)	The KTC approved Amendment No. 3 to increase the tax rate from 5% to 6%.

Section 8.302. Authority.

The Kayenta Township Commission promulgates these regulations pursuant to Section 8-313 of the Business Sales Tax Ordinance.

Section 8.303. Rate of Tax.

Effective June 1, 2018, the rate of tax shall be six percent (6%) of gross receipts. The 6% rate shall apply to all gross receipts received for goods sold or service performed after such date.

Section 8.304. Retail Sales.

- A. Gross receipts from the sales of tangible personal property to be resold by the purchaser in the ordinary course of business or to be leased out by a person in the business of leasing such personal property are not taxable.
- B. Livestock or agricultural production derived directly from a ranch or farm are not taxable. Sales of products by any farmer or other agricultural producer of poultry, eggs, or dairy to consumers are deemed casual sales and are not taxable under the retail classification if such sales have an average monthly sales value of less than \$1,000.
- C. The exemption of labor costs from the business sales tax in installation services in connection with retail sales, service industries and contract construction and delivery charges is not allowed unless the charge for services is shown separately on the sales invoice and records.
- D. Payments received after the conversion from a lease to a purchase are taxable as retail sales.
- E. Consignment Sales.

1. The following definitions apply for purposes of this rule:
 - a. “Consignee” is the party which is in the business of selling tangible personal property belonging to a “consignor.”
 - b. “Consignor” is the party with the legal right to contract the services of the consignee to sell tangible personal property on behalf of the consignor.
2. Gross receipts from consignment sales are subject to tax as retail sales.
3. A consignee shall obtain a sales tax license prior to engaging in the business of making consignment sales.

F. Discounts, Refunds, and Coupon Redemption.

1. Cash discounts allowed the purchaser for timely payment may be deducted from the sale price.
2. Refunds in cash or credit given on returned merchandise are considered to be a reduction of sales.
3. When coupons issued by a manufacturer are redeemed by a retailer the amounts refunded to the purchaser are not permissible as deductions from the selling price of articles sold by the retailer. In such cases, the gross price is taxable.
4. Coupons issued by a retailer and later redeemed by the retailer as a discount on the price of merchandise sold by him are considered a reduction of the selling price. In such cases, only the net selling price is subject to tax.

G. Retail Sales with Trade-ins.

1. When a retailer accepts tangible personal property as a trade-in for part or full payment on the sale of tangible personal property, the dollar amount of the payment represented by the trade-in is deductible from the retailer’s gross receipts from that sale.
2. A trade-in deduction shall be limited up to the amount of the retailer’s gross receipts on that sale.
3. When the property traded in is subsequently sold at retail, the gross receipts from the transaction are taxable.

H. Delivery Charges in Connection with Retail Sales.

1. A charge by a retailer for delivery fees from the retailer’s location to the purchaser’s location, if separately stated on the sales invoice, is not taxable.

2. When the freight cost is incurred any time prior to the time of the retail sale, such cost is part of the gross sale and, therefore, subject to the tax.

I. Artists.

1. Gross receipts from the sale of paintings, drawings, etchings, sculptures, craftwork, other artwork or reproductions of such items to final consumers shall be taxable as a retail sale if the person is making regular sales of such items.
2. Gross receipts from the sale of paints, canvasses, frames, sculpture ingredients, and other items which will become an integral part of the finished product shall not be taxable if sold to a creating artist who is regularly engaged in the business of creating and selling paintings, drawings, etchings, sculptures, craftwork, other artwork, or reproductions of such items. Sales of brushes, easels, tools, and similar items to be used by the creating artist shall be taxable.
3. Gross receipts from the sale of the creating artist of a painting, drawing, etching, sculpture, or a piece of craftwork that is not a reproduction of an original work shall not be taxable if:
 - a. The sale is a casual sale; or
 - b. The sale is of commissioned artwork by an individual artist. For purposes of this rule, "commissioned artwork" is a custom, one-of-a-kind art creation made by the individual artist pursuant to the particular requirements of a specific purchaser.

J. Gross receipts from sales of the following items are deductible from the tax base:

1. Drugs on a prescription.
2. Any item used in the practice of traditional Navajo medicine, provided the item is used for such purposes.
3. Medical oxygen.
4. Insulin, insulin syringes, and glucose strips whether or not prescribed.
5. Prosthetic appliances prescribed or recommended by a statutorily authorized individual.
6. Durable medical equipment
7. Prescription eyeglasses and contact lenses.
8. Hearing aids.

9. Any other item listed in Section 8-308 of the Business Sales Tax Ordinance.
- K. A retailer's gross receipts from the sale of postage stamps are not included in the tax base under retail sales if the stamps are sold for the purpose of transporting mail.
- L. Gross receipts from sales of tangible personal property made in the Navajo Nation, interstate or foreign commerce are deductible from the tax base if all of the following apply:
1. The order is received from a location outside of the Township; and
 2. The retailer ships or transports tangible personal property through the Township to a location outside of the Township for use outside of the Township.
- M. Gross receipts from sales made by florists are taxable. Delivery and relay or transmittal charges, when separately stated, are deductible from the tax base.
- N. Gross receipts from sales to non-Indians are subject to the tax unless otherwise exempt.
- O. Gross receipts from the sale of tangible personal property to the Navajo Nation, state or their political subdivisions are taxable unless otherwise exempt.
- P. Gross receipts from the sale of tangible personal property to nonprofit churches, schools, and other nonprofit organization are taxable unless otherwise exempt.
- Q. Gross rental receipts from home site leases are exempt from sales tax.
- R. Tax-exempt foods
1. Normally, all food purchases are subject to the sales tax. Tax exempt foods are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1979, to be purchased with food coupons issued by the United States Department of Agriculture.
 2. Tax-exempt food shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1979.
 3. The following are examples of items which the Township will consider as tax exempt food, provided these items are purchased with food coupons issued by the United States Department of Agriculture:
 - a. bread and flour products
 - b. can vegetable products

- c. candy and confectionary
 - d. sugar, sugar products and substitutes
 - e. cereal and cereal products
 - f. butter, oleomargarine, shortening and cooking oils
 - g. cocoa and cocoa products
 - h. coffee and coffee substitutes
 - i. milk and milk products
 - j. eggs and egg products
 - k. tea
 - l. meat and meat products
 - m. spices, condiments, extracts and food colorings
 - n. fish and fish products
 - o. frozen foods
 - p. soft drinks and soda (including bottles on which a deposit is required to be paid)
 - q. fruit and fruit products
 - r. packaged ice cream products
 - s. dietary substitutes
 - t. ice cubes and bottle water including carbonated and mineral water
 - u. purchase of seed and plants for use in gardens to produce food items for personal consumption
- S. The sales tax applies to all gross receipts for professional services performed within the Township. The tax does not apply to work performed outside of the Township, even when it is done for clients within the Township.

Section 8.305. Construction Contractors.

- A. Taxpayer bonds for Construction Contractors
- 1. A surety bond shall include a bond issued by a company authorized to execute and write bonds in the Navajo Nation and Arizona as a surety or composed of securities or cash which are deposited with the Township.
 - 2. The businesses subject to these bonds are grouped in accordance with the standard industry classifications by average business activity. The business classes and bond amounts are as follows:
 - a. Two thousand dollars (\$2,000) or such other amount as required by the Township's Building Official, whichever is higher, for:
 - i. General contractors of residential buildings other than single family;
 - ii. Operative builders;
 - iii. Plumbing, air conditioning, and heating, except electric;
 - iv. Painting, paper hanging;
 - v. Decorating;
 - vi. Electrical work;

- vii. Masonry stonework and other stonework;
- viii. Plastering, drywall, acoustical and insulation work;
- ix. Terrazzo, tile, marble and mosaic work;
- x. Carpentry;
- xi. Floor laying and other floor work;
- xii. Roofing and sheet metal work;
- xiii. Concrete work;
- xiv. Water well drilling;
- xv. Structural steel erection;
- xvi. Glass and glazing work;
- xvii. Excavating and demolition work;
- xviii. Wrecking and demolition work;
- xix. Installation and erection of building equipment; and
- xx. Special trade contractors.

b. Seven thousand dollars (\$7,000) or such other amount as required by the Township's Building Official, whichever is higher, for:

- i. General contractors of single family housing; and
- ii. Water, sewer, pipeline, communication and power-line construction.

c. Seventeen thousand dollars (\$17,000) or such other amount as required by the Township's Building Official, whichever is higher, for:

- i. General contractors of industrial buildings and warehouses;
- ii. General contractors of nonresidential buildings other than single family; and
- iii. Highways and street construction except elevated highways.

d. Twenty-two thousand dollars (\$22,000) or such other amount as required by the Township's Building Official, whichever is higher, for heavy construction.

e. One-hundred two thousand dollars (\$102,000) or such other amount as required by the Township's Building Official, whichever is higher, for bridges, tunnels and elevated highway construction.

B. The bond shall not expire prior to two years after the business license is issued. Upon lapse or forfeiture of any bond by any licensee, the licensee shall deposit with the Township another bond within five business days of the licensee's receipt of written notification by the Township.

C. All persons engaging in the business of contracting are required to obtain a business license and to file reports on a basis to be determined by the Township whether or not any tax is payable.

- D. Construction projects performed for the Navajo Nation, Township, state, cities, counties, federal government, or any subdivision or agencies thereof, are taxable, unless otherwise exempt.
- E. A person engaged in the business of leveling, ditching, well drilling, installing pumps in wells, and original land clearing for others is taxable under prime contracting.
- F. Installation of equipment which becomes permanently attached in a plant or other structure is taxable as a contracting activity, not retail installation.

Section 8.306. Hotel, Motel, Bed and Breakfast.

- A. Gross receipts from providing lodging obtained for a continuous block of time for 30 or more consecutive days shall be subject to the Sales Tax. Gross receipts from providing lodging on a daily basis or for less than 30 days shall not be subject to the Sales Tax but are subject to the Hotel Occupancy Tax.
- B. Long term residential rentals from trailers, trailer courts, apartments, townhouses, houses and housing subdivisions operated as a business are subject to the Sales Tax .
- C. If a hotel, motel, or bed and breakfast facility is engaged in the business of providing lodging and engages in the business of providing meals, the gross receipts from restaurant, snack and beverage bars are subject to the Sales Tax.
- D. Gross receipts from the sale of tangible personal property by hotel, motel, or bed and breakfast facilities such as from magazine stands, gift shops, or in-room food service or snack or beverage bars are subject to the Sales Tax.

Section 8.307. Printing.

- A. Gross receipts from the business of printing or other reproduction of books, periodicals, magazines, business or professional stationery, and of any other articles copied or reproduced by printers, publishers, engravers, embossers, or copiers, is taxable.
- B. The income from sales made by a job printer of materials on which no printing or other reproduction is done is subject to tax under retail sales.
- C. A job printer may not take a deduction for cost of materials used.
- D. Photography does not fall within printing but is included under the retail sales as professional services.

Section 8.308. Common Carriers.

- A. Gross proceeds of sales or gross income from charges for transporting packages, materials, or freight from one point to another point in the Township, if not separately stated as a delivery charge, is included in the tax base.
- B. Gross income from sales by telephone or telegraph corporations, whether the corporations are privately or publicly owned, for all telephone service (including cellular, cable, or satellite telephone service), facsimile or telegraph service provided to residential and commercial consumers within the Township is taxable.

Section 8.309. Rental, Lease of Tangible Personal Property.

- A. Gross income derived from the rental of tangible personal property is included in the tax base unless a specific statutory exemption, exclusion, or deduction applies. Examples of tangible personal property include televisions, trucks, lawnmowers, floor polishers, tuxedos, uniforms, furniture, towels, and linens.
- B. Gross income from the rental of tangible personal property includes charges for installation, labor, insurance, maintenance, repairs, pick-up, delivery, assembly, set-up, personal property taxes, and penalty fees even if these charges are billed as separate items, unless a specific statutory exemption, exclusion, or deduction applies.
- C. The rental location of the equipment leased by a Township lessor to a lessee who takes possession of the property in the Township is taxable.
- D. A lessor's gross income from the rental of tangible personal property to a school, church, or other nonprofit organization is taxable unless a specific statutory exemption, exclusion, or deduction applies.

Section 8.310. Restaurant.

- A. A restaurant's gross proceeds of sales or gross income from sales of food or drink to an employee of the United States Government, the Navajo Nation Government, the state or its political subdivisions, or any other government agency, or its employees is included in the tax base under the restaurant classification.
- B. A sale of meals to a school, church, or charitable institution is exempt under Section 8-308 of the Business Sales Tax Ordinance.
- C. A restaurant's gross proceeds of sales or gross income from the operation of amusement devices such as coin operated computer games and juke boxes are included in the tax base.

- D. If a restaurant cannot specifically segregate the charges for gratuities or if any portion of the amounts charged for gratuities is not distributed to the employees involved, the total gross receipts from the gratuities are included in the tax base of the restaurant.

Section 8.311. General.

- A. “Casual sale” means an occasional transaction of an isolated nature made by a person who is not engaged in the business of selling, within or without the Navajo Nation or the Township, the same type or character of property as that which was sold.
- B. The sales tax is imposed directly on the customer engaging in a taxable transaction with a business within the Township. The vendor shall be liable for the tax, regardless of whether or not the vendor passes on the economic burden of the tax to the customer.
- C. The seller may establish the deduction for a sale for resale or a sale for lease by obtaining Form 500, “Sales Tax Exemption Certificate” from the purchaser.
- D. The revenues from the business sales tax that is deposited into the General Fund are to be utilized to provide essential governmental services. For purposes of this regulation, the payment of personal expenses and debts, e.g., utility bills, vehicle payments, rent, and medical bills are not considered essential governmental services and, therefore, use of these revenues for such purposes is prohibited.
- E. The vendor is responsible for the payment of tax and therefore shall provide sufficient documentation in support of all deductions.
- F. The Township has prescribed certificates for establishing entitlement to statutory deductions and exemptions. Reproductions of the blank prescribed original certificate shall be acceptable for use.
 - 1. Form 500 is the “Sales Tax Exemption Certificate” for documenting sales that are exempt from the business sales tax.
 - 2. Form 500 must be filled out completely including a statement as to what the items purchased will be used for. If Form 500 is not collected from the purchaser at the time of the purchase, the vendor will be allowed thirty days from the time such documentation is requested by the Township to obtain a completed, signed Form 500 from their customer. Other forms of documentation may be accepted if they contain the information requested on Form 500 and substantially document an exempt sale.
 - 3. Form 505 is the “Prime Contractor’s Certificate” for documenting subcontractor’s status on a job within the Township.
 - 4. Form 505 must be completed and signed by the prime contractor who is assuming liability for the tax on said job. Other forms of documentation may be suitable such as contracts or statements signed by the prime contractor.

- G. A vendor collecting tax from a purchaser shall keep and preserve suitable records and other books and accounts necessary to determine the tax collected for the statutorily prescribed limitation period.
 - 1. If the sales invoice separately states the tax collected, the amount is the minimum amount that must be paid to the Township. If the stated amount is less than the 6.0% tax required, the vendor must pay the difference between the amount collected and the amount due. If the amount stated exceeds the 6.0% tax due, the excess tax must be either refunded to the customer or sent to the Township as “Excess Tax Collected.”
 - 2. If the tax is not separately stated or the words “tax included” appears on the sales invoice, the tax must be factored out of the amount of income received from that customer. The sales tax factor for 6.0% is 0.05660377. To calculate the tax on invoices that do not separately state the tax, multiply the total taxable sale by the factor. If the sales tax is not separately stated on the invoice and collected from the customer, the business is liable for the factored tax due.

- H. The Use Tax imposes upon the buyer a tax on the business’s purchase of tangible personal property from an out-of-state or out-of-town vendor.
 - 1. The tax applies to the use, storage, or consumption of items purchased from out-of-state or out-of-town supplies by a Township business.
 - 2. In cases where the Township business buyer has paid sales tax to an out-of-state or out-of-town seller, the amount paid may be applied against his Township Use Tax liability.

Section 8.312. Authority of Town Manager to Rule on, Abate or Compromise Liability Arising From Denial of Claims for Refund or Objections to an Assessment or Other Adverse Action.

- A. Pursuant to Section 8.110 of the Tax Administration Regulations, the Town Manager has the duty and responsibility to rule on a taxpayer’s objection to a denial of a claim for refund, an assessment or other adverse action; and pursuant to Section 8-133 of the Tax Administration Ordinance, the Town Manager after consultation with the Commission can abate any part of the assessment or compromise the tax liability arising from such denials, objections or other adverse actions. It is a condition precedent to the exercise of the Town Manager’s authority that the taxpayer must:
 - 1. file a written objection with the Township and
 - 2. file with the Township a written request for a conference with the Town Manager.

- B. The Town Manager's decision whether or not to grant a stay of payment of taxes pending a decision is not subject to Commission approval nor can such decision be appealed to the Administrative Hearing Officer or the Supreme Court.
- C. Payment of less than \$1,000.00 on a claim for refund is not subject to approval by the Commission or the Town Manager; such payments must be approved by the Financial Manager and notice shall be given to the Town Manager.
- D. Neither the Town Manager nor any Township employee is authorized to waive the application and enforcement of any tax ordinance or regulation, unless specifically authorized by law.
- E. Taxpayers petitioning the Township for special rates, favorable rates, or exemptions or deductions shall petition in writing to the Township. In the interest of protecting fair treatment of all taxpayers under Business Sales Tax Ordinance, such variances can only be approved through the following procedure:
 - 1. The variance must be pre-approved by the Town Manager and the Commission; and
 - 2. The variance must be enacted as an amendment to the Business Sales Tax Ordinance pursuant to the procedures for amending Township ordinances; and
 - 3. The variance must be approved pursuant to the amended ordinance.

Section 8.313. Effective Date.

This Subchapter shall take effect on June 14, 2004. The effective date of any amendments thereto shall be stated in the adopting resolution.