



**CHAPTER 8
KAYENTA TOWNSHIP TAX ORDINANCES**

**SUBCHAPTER 1
TAX ADMINISTRATION**

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TAX ADMINISTRATION ORDINANCE

SECTION 8-101 Title

This subchapter shall be known as Subchapter One. Tax Administration, of Chapter 8, Kayenta Township Tax Ordinances.

History

KTCJY-59-11 (July 28, 2011)

KTCA-06-14 (April 14, 2014)

SECTION 8-102 Purpose

The purpose of this subchapter is to provide statutory rules applicable to all taxes imposed by the Commission.

SECTION 8-103 Administration

- A. The Commission is empowered to administer and delegate the administration of all taxes and, to that end, shall be empowered to adopt substantive and procedural rules and regulations, orders implementing its decisions and rulings, and instructions such as may be necessary to the proper and efficient administration of these laws.
- B. The Kayenta Township shall have day-to-day responsibility for the administration of all tax ordinances and shall have all powers consistent with its plan of operation.

SECTION 8-104 Definitions

Subject to additional definitions (if any) contained in the subsequent sections of this subchapter or in subsequent chapters:

- A. "Chapter" means Chapter 8, Kayenta Township Tax Ordinances, its subchapters and accompanying regulations.
- B. "Control" means the right or any kind of ability to direct the performance or activity of another, whether legally enforceable or not, and however such right may be exercisable or exercised.
- C. "Commission" means the Kayenta Township Commission.
- D. "Fraud" occurs when any person:
 1. willfully makes and subscribes any return, statement or other document that contains or is verified by a written declaration that it is true and correct as to every material matter and that the person does not believe to be true and correct as to every matter;
 2. files any return electronically, knowing that the information in the return is not true and correct as to every material matter; or

3. with intent to evade or defeat the payment or collection of any tax, or knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax. removes, conceals, or releases any property on which levy is authorized or that is liable for payment of tax or aids in accomplishing or causes the accomplishment of any of the foregoing.
- E. "Month" means any consecutive thirty (30) calendar day time period for purposes of this subchapter.
- F. "Ordinance" means the Kayenta Township Tax Ordinances, which includes this subchapter and any tax ordinance enacted by the Commission.
- G. "Person" means any organization, whether a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, company, corporation, or government, including any wholly owned subdivision, enterprise, corporation or other entity of the Navajo Nation government, or any part, division, or agency of any of the foregoing, and an individual or group of individuals.
- H. "Received" means:
 1. the postmark date, if action is taken by mail;
 2. the date actually received by the Kayenta Township, when documents and/or payments are hand-delivered; or
 3. the date of receipt by the Kayenta Township, in the case of wire transfer payments.
- I. "Regulations" means the accompanying regulations adopted by the Commission.
- J. "Related persons" with regard to business entities means two or more persons owned or controlled, directly or indirectly, by the same person. As applied to natural persons, "related persons" mean two or more natural persons who have a legal relationship arising out of marriage, adoption, or blood, through the third degree of kinship.
- K. "Return" means any document required to be filed when paying any Kayenta Township tax, as contrasted with other documents required to be filed that are not associated with actual payment of taxes. "Return" also includes any attachments, such as schedules or forms that are associated with any return.
- L. "Taxes" means any tax, interest, penalties, and costs, imposed or assessed individually or collectively pursuant to the Ordinance.
- M. "Taxpayer" means the person liable for the taxes or the person responsible for collecting and remitting the taxes.
- N. "Township" means the Kayenta Township, the entity responsible for the administration of all Kayenta Township tax ordinances.

SECTION 8-105 Assessment of Taxes

- A. The taxes imposed by the Ordinance are assessed for a statutory period and are the liability of the taxpayers.
- B. The Township is authorized to assess taxes against a person and those assessments are presumed to be correct.
 - 1. When it appears that the return filed by a person understates the taxes due under the Ordinance, the Township is authorized to assess the person for any tax deficiency, interest, penalties, and costs. The assessment is binding on the person but may be appealed in accordance with rules and regulations.
 - 2. If no return is timely filed as required, the Township is authorized to make an estimate of the tax due and to assess the person for that tax, interest, penalties, and costs. This assessment is binding on the person unless shown to be clearly erroneous.
 - 3. If a person fails to provide information within its possession or control which is relevant to a determination of taxes due and which it is required to provide under the Ordinance, the Township is authorized to make an estimate of the tax due and to assess the taxpayer for that tax, interest, penalties, and costs. This assessment is binding on the taxpayer unless it is shown that the estimate, on the basis of the best information then available to the Township, was clearly erroneous or unless the Township for other good cause shown relieves the taxpayer from the operation of this section.
- C. Any taxes assessed shall become the liability of the taxpayer on the date due. If the taxpayer is a corporation or a trust or a part thereof, then the corporation or trust shall be liable for the taxes. If the taxpayer is an association, joint venture, limited liability company or partnership, or a part thereof, then all the associates, participants, members or partners, both general and limited, shall be jointly and severally liable for the taxes. Companies shall be treated as corporations or partnerships consistent with their treatment by the Internal Revenue Service.
- D. The owners of the interests in a unit or lease shall be jointly and severally liable for the taxes assessed with respect to said unit or lease.
- E. The Township shall have the authority to redetermine incorrect or erroneous assessments, to issue amended assessments, if necessary.

SECTION 8-106 Jeopardy Assessments

- A. If the Auditor hired or contracted by the Township ("Auditor") believes that the collection of any assessment or deficiency of any amounts imposed by this Chapter will be jeopardized by delay, the Auditor shall deliver to the taxpayer a notice of such finding and demand immediate payment of the tax deficiency declared to be in jeopardy, including interest, penalties, and additions.
- B. Evidence that collection of tax due is in jeopardy shall include documentation that:

1. The taxpayer is going out of business;
 2. The taxpayer has no Township sales tax license or has no permanent business location in the Township;
 3. The taxpayer has failed to timely pay any tax (or penalties and interest thereon) due to the Township on three (3) or more occasions within the previous thirty-six (36) calendar months;
 4. The taxpayer has filed a fraudulent return with the intent to evade tax or has failed to file required tax returns due to the Township on three (3) or more occasions within the previous twelve calendar months;
 5. The taxpayer has remitted payment by check, which was dishonored; or
 6. The taxpayer has failed to comply with a formal written request of the Auditor made pursuant to Section 8-111.
- C. Jeopardy assessments are immediately due and payable, and the Township may immediately begin proceedings for collection. The taxpayer, however, may stay collection by filing, within ten (10) days after receipt of notice of jeopardy assessment, or within such additional time as the Auditor may allow, by bond or collateral in favor of the Township in the amount the Auditor declared to be in jeopardy in his notice.
- D. "Bond or Collateral," as required by this Section
1. shall mean either:
 - a. a bond issued in favor of the Township by a surety company authorized to transact business in the Nation or in Arizona or approved by the Insurance Department of the Navajo Nation or Arizona as to solvency and responsibility, or
 - b. collateral composed of securities or cash which are deposited with, and kept in the custody of, the Auditor; and
 2. shall be of such form that it may, at any time without notice, be applied to any tax, penalties, or interest due and payable for the purposes of this Chapter. Securities held as collateral by the Auditor must be of a nature that they may be sold at public or private sale without notice to the taxpayer.
- E. If the bond or collateral is not filed within the period prescribed by subsection D(2) above, the Auditor may treat the assessment as final for purposes of any collection proceedings. The taxpayer nevertheless shall be afforded the appeal rights provided in Section 8-132. The filing of a petition by the taxpayer under Section 8-132, however, shall not stay the Township's rights to pursue any collection proceedings.
- F. If the taxpayer timely files sufficient bond or collateral, the jeopardy requirements are deemed satisfied, and the taxpayer may avail himself of the provisions of Section 8-132.

- G. Within thirty (30) days after the date on which the Auditor furnishes written notice required by Section 8-136, the taxpayer, pursuant to Section 8-132 may request the Town Manager to review the action taken. Within fifteen (15) days after the request for review, the Town Manager shall determine whether both the jeopardy determination and the amount assessed are reasonable.
- H. Within thirty (30) days after the Town Manager notifies the taxpayer of the determination he reached pursuant to subsection G above, the taxpayer may seek review by the Administrative Hearing Officer of all or part of the Town Manager's decision. If the Administrative Hearing Officer determines that either the jeopardy determination or the amount assessed is unreasonable, the Administrative Hearing Officer may order the Auditor to abate the assessment, to redetermine any part of amount assessed or to take such other action as the Administrative Hearing Officer deems appropriate.
- I. A taxpayer may seek judicial review of all or part of the Hearing Officer's decision by initiating action in the Supreme Court under Section 8-132.
- J. An action for judicial review cannot be commenced by either the taxpayer or the Township more than thirty (30) days after receipt by the taxpayer of notice of any refund or assessment recalculated or reduced to conform to the Town Manager's decision, unless the time to commence such an action is extended in writing signed by the taxpayer and the Auditor.

SECTION 8-107 Waiver of Taxes

Any waiver of tax or associated interest requires a unanimous vote of the Commission. The Township Manager has the authority to relieve a taxpayer of penalties and certain administrative fees set forth in Sections 8-112 to 8-116 below.

SECTION 8-108 Nondiscrimination

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

SECTION 8-109 Designation of Individual

On an annual basis, each taxpayer must designate and provide the mailing address of a natural person for the purposes of notice, by filing a Form 100. The forms must be submitted each year to the Township by January 15, even if no changes have occurred since the prior filing. In addition, an updated form must be filed within thirty (30) days of a change in circumstances. The Commission may by regulation impose requirements as to the individuals who shall be designated under this section, and may require information or documentation it deems necessary for the proper and efficient administration of these taxes to be provided with the designation. For purposes of this only, the term "taxpayers" shall not include persons on whom the Hotel Occupancy Tax is imposed, but shall include persons responsible for collecting and remitting the Hotel Occupancy Tax.

SECTION 8-110 Extension of Time

A taxpayer may request an extension of time for filing. The request must be made to the Township by filing the required extension request form on or before the due date, and an estimated payment of the tax due must be made at the time of the request. An automatic extension of sixty (60) days will be granted by the Township.

SECTION 8-111 Recordkeeping

Every taxpayer shall keep full and true records of all taxable activities, in accordance with regulations.

SECTION 8-112 Interest Imposed

Rates of interest shall be established by regulation. Interest shall be imposed on any unpaid amount of tax from the date the payment was due, without regard to any extension of time or stay of payment, to the date payment is received. The Commission is authorized to set different rates of interest for underpayments and overpayments.

SECTION 8-113 Penalties for Failure to File

- A. If any taxpayer fails to timely file any tax return, a penalty shall be assessed for each month or fraction thereof that the return is not filed, in the amount of 5% of the tax due for the period; provided, however, that the minimum amount for the total penalty imposed under this section shall be \$50.
- B. The total penalty assessed in subsection (A) shall not exceed 25% of the tax due, except where the \$50 minimum applies.
- C. If a person fails to timely file a Form 100, a one-time \$50 penalty shall be assessed for each document that is not timely filed.
- D. For purposes of this section, a form filed on or before an extended due date for filing is timely filed.
- E. For good cause shown, the Township may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

SECTION 8-114 Penalties for Failure to Pay

- A. A taxpayer failing to timely pay an amount of tax by the time due shall be assessed an immediate penalty of 5% of the amount of the underpayment.
- B. For each month the payment is overdue, an additional penalty shall be assessed of 5% of the underpayment.
- C. The total penalty imposed under this section shall not exceed 10% of the tax due.

- D. For purposes of this section, a payment received on or before an extended date for payment is timely paid.
- E. For good cause shown, the Township may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

SECTION 8-115 Penalties for Attempt to Evade or Defeat Tax

- A. Any taxpayer understating the tax imposed by the Ordinance through negligence of the Ordinance and regulations, but without the intent to defraud, may be assessed a penalty of \$250, plus 25% of the underpayment of tax.
- B. Any taxpayer understating the tax imposed by the Ordinance through reckless disregard of the Ordinance and regulations, but without the intent to defraud, shall be assessed a penalty of \$250, plus 25% of the underpayment of tax.
- C. If any part of an understatement of tax is shown to be due to fraud, the taxpayer shall be assessed a penalty of \$500, plus 50% of the underpayment of tax.
- D. Any person who willfully assists a taxpayer in the fraudulent understatement of tax due under the Ordinance shall be subject to a penalty of \$500, plus 25% of the underpayment of tax.
- E. Any liability arising under this section shall be assessed and collected as taxes imposed by the Ordinance.
- F. For good cause shown, the Township may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

SECTION 8-116 Charges for Administrative Costs

- A. A taxpayer failing to pay any taxes on the due date may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including, but not limited to, attorney fees and other costs of collection.
- B. For good cause shown, the Township may relieve the taxpayer from all or part of the charges imposed under this section.

SECTION 8-117 Failure to Comply with Ordinance

- A. Any taxpayer who fails to comply with a requirement to designate an individual, to file a return, to provide information or documents, to allow access to equipment within its possession or control, to furnish a surety bond or other security, to comply with a duly issued subpoena, or to comply with a lawful order of the Township, may have all or some of its rights to engage in productive activity within the Township suspended, until compliance is made or for such shorter time as the Township may provide.
- B. Upon receipt of a notice of non-compliance issued by the Township, a taxpayer has thirty (30) days in which to come into compliance. If the taxpayer fails to do so, the Township

shall issue a notice of intent to suspend. The taxpayer shall have thirty (30) days in which to come into compliance or to appeal only the notice of intent to suspend pursuant to Section 8-132. This right of appeal is the sole remedy. Failure on the taxpayer's part to act within the thirty (30) days shall result in the Township issuing a final order of suspension. In addition, if an appeal is decided adverse to a taxpayer, the Township shall issue a final order of suspension.

- C. The Navajo Nation Division of Public Safety, upon request by the Township, shall enforce the final order of suspension, which shall remain in effect until the taxpayer comes into compliance.

SECTION 8-118 Interference with Administration

- A. It shall be unlawful for any person, forcibly, or by bribe, threat or other corrupt practice, to obstruct or impede the due administration of this tax.
- B. It shall be unlawful for any person willfully to fail to comply with a subpoena duly issued pursuant to this Chapter.
- C. It shall be unlawful for any person to commit fraud, or knowingly to assist another in the commission of a fraud, with the intent to evade or defeat the assessment or collection of any taxes imposed by this Chapter.
- D. It shall be unlawful for any person with knowledge and intent to falsely verify by written declaration any return or document.
- E. Any Indian who violates any of the provisions of this section shall be guilty of an offense and, upon conviction, shall be sentenced to a term of imprisonment of no more than 180 days, or ordered to pay a fine not to exceed \$500, or both, in accordance with the provisions of Title 17, Navajo Nation Code.
- F. Any non-member of the Navajo Nation who violates any of the provisions of this section may be excluded from land subject to the jurisdiction of the Township and/or Navajo Nation in accordance with the procedures set forth in 17 N.T.C. subsection 1901-1906.
- G. Any person who violates any of the provisions of this section, or whose employees or agents violate any of the provisions of this section may have its rights to engage in taxable sales within all or some of the jurisdiction of the Township temporarily or permanently suspended. The Commission is empowered to order such suspension, provided that it shall first give the person or vendor to be suspended notice of eviction or non-compliance with this Chapter and an opportunity to be heard under Section 8-132, and that any suspension may be appealed pursuant to Section 8-132.
- H. Information concerning criminal interference with administration of the Ordinance shall be provided to the Office of the Prosecutor or appropriate authorities for appropriate action.

SECTION 8-119 Collection Powers

- A. In accordance with the provisions of the Ordinance, the Township has the power to collect any taxes assessed, including the power to attach and seize the assets of a taxpayer or any property subject to a lien. In addition, the Township has all other powers available for collection of debts owed it.
- B. The Township may bring suit or enforcement proceedings in any court of competent jurisdiction. Provided, that the bringing of suit or enforcement proceedings shall not constitute a waiver of sovereign immunity, and, further provided, that the Township shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

SECTION 8-120 Security for Payment

Whenever necessary to secure the payment of any taxes due or reasonably expected to become due, the Township is authorized to require the taxpayer to furnish an acceptable surety bond in an appropriate amount. The Commission shall prescribe by regulation the terms and conditions for requiring such security. For purposes of Section 8-124, the requirement of security for payment shall be considered an adverse action.

SECTION 8-121 Lien for Taxes

- A. If a taxpayer fails to pay any taxes after demand or assessment by the Township, or fails to provide security as set forth in Section 8-120, the amount shall be a lien in favor of the Township upon all property or rights to property of those liable under Section 8-105.
- B. The lien shall arise at the time the demand or assessment is made, shall attach to all property then owned and thereafter acquired, and shall continue until the amount of the lien is satisfied or released, and shall be effective against related persons without notice.
- C. Provided, that with respect to a required return, a lien shall arise for any unpaid taxes at the time filing is due without further demand or assessment.
- D. If a lien is required as a condition for granting an extension or stay of payment, such lien shall arise according to the terms of the extension or stay.
- E. A lien shall be effective as against other parties upon notice being recorded in the offices of the Township, Navajo Business Regulatory Department and other appropriate agencies in a form available for inspection by the public.
- F. The Commission may by regulation exempt certain property from the operation of the lien created by this section.

SECTION 8-122 Priority of Lien

A lien arising pursuant to Section 8-121 shall have priority over all other liens imposed by any government other than the Navajo Nation, regardless of the date of perfection.

SECTION 8-123 Release of Lien

- A. The lien shall be released upon payment of the entire liability of the taxpayer on account of whose liability the lien arose.
- B. The payment of any part of the liability shall operate to reduce the amount of the lien by the amount paid.
- C. Where a lien has been recorded and the Township thereafter receives all or part of the taxes giving rise to the lien, the Township will cause a notation of the complete or partial release of the lien to be made in the record.
- D. The Township may in its discretion release liens on certain property without payment of all outstanding liabilities, for good cause, or where the interests of the Township are adequately protected by other security.

SECTION 8-124 Foreclosure of Lien

- A. The Township may foreclose upon any or all items of property or rights to property subject to a lien for taxes by seizure and sale, to be conducted as set forth in this section and accompanying regulations.
- B. Seizure:
 - 1. After seizure of property or rights to property, the Township shall notify the owner thereof of the amount and kind of property seized and of the total amount demanded in payment of tax.
 - 2. Any person shall have the right to pay the amount due, together with the expenses of the proceeding, or furnish acceptable security for the payment thereof, to the Township at any time prior to the sale thereof, and upon payment or furnishing of security, the Township shall restore the property to him, and all further proceedings in connection with the seizure of the property shall cease from the time of the payment.
 - 3. A taxpayer may appeal a seizure, and appeals shall be taken pursuant to Section 8-132 under the following conditions:
 - a. The seized property shall not be removed from the jurisdiction of the Kayenta Township;
 - b. The taxpayer must provide an affidavit identifying all property or rights to property owned or controlled by the taxpayer located within the jurisdiction of the Kayenta Township.

4. The effect of a seizure upon any person for obligations due or payable to a taxpayer or persons liable under Section 8-105 shall be continuous from the date the seizure is first made until the liability out of which the seizure arose is satisfied.
5. Any person in possession of or obligated with respect to property or rights to property which has been seized who, upon demand by the Township, surrenders such property or rights to property (or discharges said obligation) to the Township, shall be discharged from any obligation or liability to the taxpayer or persons liable under Section 8-105 whose property or rights to property were seized.

C. Sale of Seized Property:

1. The Township shall publish a notice of sale, setting forth the time and place of the sale.
2. Proceedings for the sale of property shall be effective to transfer to the purchaser all right, title, and interest therein of the taxpayer or person whose property or rights to property were seized. Provided, that where required by federal law the sale of property shall not be final without the approval of the Secretary of the Interior or his designee.

D. The Township may delegate and empower persons to carry out the procedures of this section, including officers of the Navajo Division of Public Safety, who shall render assistance in this regard on request by the Township.

SECTION 8-125 Application of Proceeds

- A. Money seized by the Township, or realized from property or rights to property seized, shall be applied first to the expenses of the seizure and proceedings for the conversion of property, and then to the liability for costs, penalties, interest, and tax, in that order.
- B. The balance, if any, shall be remitted to the person or persons who have claimed and proved legal entitlement thereto, provided that the Township may set time limits or other reasonable conditions on the making and proving of such claims.

SECTION 8-126 Interference with Foreclosure

- A. No person shall remove from the jurisdiction of the Kayenta Township any property on which there is a lien for taxes pursuant to Section 8-121.
- B. No person in possession of or obligated with respect to property or rights to property which have been seized, shall fail to surrender such property or rights or to discharge such obligation upon demand by the Township therefor, except as to any part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process.
- C. Any person violating the provisions of this section shall be personally liable for the value of the property removed or not surrendered, or for the amount of the obligation not discharged, not exceeding the amount for which the seizure was made. Any liability

arising under this section shall be assessed and collected as taxes imposed by the Ordinance.

SECTION 8-127 Transfer of Business

- A. If a person buys substantially all of the assets of a taxpayer within the Township, that person shall withhold from the purchase price and pay to the Township the amount of taxes due on account of activities of the taxpayer prior to the purchase.
- B. Prior to transfer, a buyer may make a written request and, within forty-five (45) days after the owner's records are made available for audit, the Township shall send a notice to the buyer for the taxes due. Thereafter, the buyer shall not be personally liable under this section for any taxes in excess of the amount stated in the notice, or for any such taxes if no notice is given within the time required.
- C. Any buyer failing to make such a request or failing to withhold taxes from the purchase price shall be personally liable up to the value of all the property acquired. Any liability arising under this section shall be assessed and collected as taxes imposed by the Ordinance.
- D. No consent to the assignment or transfer of any lease or other rights to engage in productive activity within the Township shall be granted unless the Township first certifies that all applicable taxes have been paid or that payment has been adequately secured.

SECTION 8-128 Mutual Assistance Agreements

The Township is authorized to negotiate mutual assessment and collection assistance agreements with any other tax jurisdiction. The agreements so negotiated will come into force only upon ratification by the Commission.

SECTION 8-129 Prohibition of Suits

No suits for the purpose of restraining the assessment or collection of the taxes imposed under the Ordinance shall be maintained in any court by any person, whether or not such person is the person against whom such taxes were assessed. All actions concerning the application of the Ordinance shall be brought pursuant to Section 8-132.

SECTION 8-130 Statute of Limitations

- A. The taxes imposed and required to be collected by the Ordinance shall be assessed within four (4) years after the return is filed, except as provided in subsection (B) of this section.
- B. Exceptions to the statute of limitations on assessment:
 - 1. In the case of fraudulent conduct, no period of limitations shall apply.
 - 2. In the case of failure to file a return, declaration of interest, or other required document, no period of limitations shall apply.

3. The running of the period of limitations on assessment is suspended during any period the Township is prohibited by any court from making an assessment.
 4. The running of the period of limitations on assessment may be suspended for any period agreed upon between the taxpayer and the Township.
- C. Any action in a court or by seizure for collection of taxes imposed by the Ordinance must be commenced within four (4) years of the date of assessment, except as provided in subsection (D).
- D. Exceptions to the statute of limitations on collection:
1. The running of the period of limitations on collection is suspended during any period the Township is prohibited by any court from commencing collection proceedings and during any period of appeal under Section 8-132.
 2. The running of the period of limitations on collections may be suspended for any period agreed upon between the taxpayer and the Township.

SECTION 8-131 Procedure for Refunds

Any taxpayer believing it has made an overpayment of taxes may file a written claim for refund with the Township. These refund claims must be filed within one (1) year after the alleged overpayment was made. The procedure for refund claims shall be established in the regulations.

SECTION 8-132 Procedure for Appeal

- A. Appeals from assessments, denials of refund, or other adverse action shall be made first to the Township according to procedures established in regulations; these procedures shall also apply to any challenges to the validity of the Ordinance. The Commission may permit or require one or more levels of review by the Township or its designees and may provide for hearings before the Commission as a body or its designees. The failure to duly proceed to a next required level of review under this subsection shall constitute a waiver of any further appeal pursuant to this subsection. A final decision pursuant to such regulations shall be final for the Township.
- B. Procedures for staying the payment of taxes which are being appealed under subsection (A) of this section may be established in regulations. The Township in its discretion may condition the grant of a stay on the posting of a bond or provision of other security.

SECTION 8-133 Abatement Authority

- A. In response to a written request for abatement, or when an assessment is found to be incorrect, the Township may abate any part of the assessment determined to have been incorrectly, erroneously, or illegally made.

- B. Upon a compromise of liability and according to the terms of the closing agreement formalizing the compromise, the Township shall abate the appropriate amount of the assessment.

SECTION 8-134 Closing Agreements

- A. If in good faith the Township at any time is in doubt of the taxpayer's liability, it may enter into a written closing agreement with the taxpayer that adequately protects the interests of the Township, provided that such agreement shall be subject to review by the Township's legal counsel.
- B. If entered into after an appeal has been filed pursuant to Section 8-132, a closing agreement shall be part of a stipulated order or judgment disposing of the case.
- C. As a condition for entering into a closing agreement, the Township may require the provision of security for payment of any taxes due according to the terms of the agreement.
- D. A closing agreement is conclusive as to the liability or nonliability for payment of taxes relating to the periods referred to in the agreement only, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

SECTION 8-135 Confidentiality Rules

- A. Nothing in this section is intended to prevent the publication or disclosure of the names and addresses of registered taxpayers or general information which is otherwise in the public record or generally available to the public upon the making of reasonable inquiry.
- B. It shall be unlawful for any employee or former employee of the Township to reveal to any person, other than another employee or legal counsel for the Township, any information contained in the return of any taxpayer or any other information about any taxpayer acquired as a result of his or her employment by the Township, except:
 - 1. Where the taxpayer has given detailed consent in writing to the release of specific information;
 - 2. To an authorized representative of the taxpayer;
 - 3. To an employee of the government of the Navajo Nation for use in connection with the governmental function of said employee, provided that it shall be unlawful for the Navajo Nation employee to reveal said information except as permitted in this section;
 - 4. To an authorized representative of a federal agency, pursuant to the terms of a reciprocal agreement for the exchange of such information;
 - 5. To the taxpayer, in any administrative or judicial proceeding in which that taxpayer has put its own liability for compliance with the Township and Navajo tax laws in

issue, as to all information directly reflecting, referring, or relating to that taxpayer that is not otherwise privileged;

6. In compliance with the order of a hearing officer of competent jurisdiction or any court of competent jurisdiction in which the information sought is material to the inquiry;
 7. In recording tax liens on the property of a taxpayer or collecting taxes by levy upon the property or rights to property of a taxpayer;
 8. In statistical releases not identifying the information provided as applicable to any single taxpayer;
 9. To the extent of revealing whether a taxpayer has or has not made a designation (and, if so, the name and address of that designee), or whether a person is or is not a designee (and, if so, by whom he has been designated); and
 10. To the extent of revealing to the purchaser or intended purchaser of a taxpayer or the property thereof the amount and basis of any unpaid taxes for which the seller is liable.
- C. For purposes of this section, "employee of the Township" shall include members of the Commission and any person for whose services the Township has contracted, provided that such person shall agree in the contract for services to abide by the provisions of this section.
- D. Any Township employee or former employee who violates any of the provisions of this section shall be subject to a civil fine not to exceed \$500. The District Courts of the Navajo Nation shall have jurisdiction to hear cases arising under this section, which may only be brought by the taxpayer harmed by the violation of this section.
- E. The Township may in its discretion further restrict the disclosure of information, and such restriction shall be considered an adverse action for purposes of Section 8-132.

SECTION 8-136 Notice

The Township may give notice to a taxpayer by mailing the notice to the individual last designated by the taxpayer, at the address shown on the designation. Where a taxpayer has not designated an individual, notice may be given by mailing the notice to the last known address of the taxpayer, or by mailing the notice to a person who is lessee, permittee, or assignee of the affected property, or to a person holding a permit or license for the conduct of the taxable activity. The use of other methods of providing notice, including publication, may be made so long as the method comports with due process.

SECTION 8-137 Investigative Authority

- A. For the purpose of enforcing the provisions of the Ordinance, the Township is authorized to inspect property, to examine and require the production of any pertinent records, books, information, evidence, or financial data, and to require the presence of any person

and require testimony under oath concerning the subject matter of an inquiry, and to make a permanent record of the proceeding.

- B. As a means for accomplishing the foregoing, the Township is hereby vested with the power to issue subpoenas and summonses, pursuant to regulations.
- C. The Navajo Nation courts shall have the power to enforce administrative subpoenas and summonses issued by the Township.

SECTION 8-138 Oaths and Affirmations

Any agent or employee designated by the Township for that purpose is authorized to administer such oaths or affirmations and to certify to such documents as may be necessary under the Ordinance or the regulations.

SECTION 8-139 Receipts; Disbursements

- A. There is hereby created in the treasury of the Kayenta Township Tax Administration Suspense Fund.
- B. Ten percent (10%) of all money received by the Township as taxes shall be deposited forthwith to the credit of said Fund.
- C. Payment of claims for refund shall be disbursed from this Fund, except to the extent that there is a pertinent escrow established pursuant to subsection (E) of this section.
- D. At the end of each month, the balance remaining in the Fund, after the payment of refunds under subsection (C) of this section, shall be transferred to the Kayenta Township general fund to be used for providing essential governmental services.
- E. Notwithstanding the foregoing, the Commission may in its discretion hold certain contested amounts in escrow, or direct some balance or a percentage of receipts to be maintained in the Tax Administration Suspense Fund from month to month in anticipation of disbursements which may have to be made therefrom.
- F. Balances maintained pursuant to paragraph (E) may only be reappropriated by a majority vote of the full Commission.

SECTION 8-140 Severability

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

SECTION 8-141 Effective Date

This subchapter shall become effective on September 1, 2011.



**KAYENTA TOWNSHIP
TAX ADMINISTRATION REGULATIONS**

- SECTION 8.101 TITLE
- SECTION 8.102 DEFINITIONS
- SECTION 8.103 LAY AND COLLECT TAXES
- SECTION 8.104 TOWNSHIP
- SECTION 8.105 PROPOSAL OF REGULATIONS
- SECTION 8.106 ADOPTION OF REGULATIONS
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- SECTION 8.118 NOTICE OF LIEN
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- SECTION 8.120 REQUESTS FOR INFORMATION
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- SECTION 8.122 PLACE AND MANNER OF FILING PAYMENT
- SECTION 8.123 DUE DATES AND TIME DETERMINATION
- SECTION 8.124 RULE FOR LIABILITIES OVER \$10,000
- SECTION 8.125 INTEREST RATES AND APPLICATION
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- SECTION 8.127 CHARGES FOR ADMINISTRATIVE COSTS
- SECTION 8.128 SUSPENSION AND EXCLUSION
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- SECTION 8.132 DELINQUENT LIABILITIES
- SECTION 8.133 COLLECTION
- SECTION 8.134 DUTIES OF THE FINANCE DEPARTMENT

SECTION 8.135 ESTABLISHMENT OF ESCROW
SECTION 8.136 EFFECTIVE DATE

Section 8.101. Title.

This subchapter shall be called the Kayenta Township Tax Administration Regulations (“Regulations”).

Section 8.102. Definitions.

Subject to additional definitions (if any) contained in the subsequent paragraphs of this subchapter and in other subchapters, and unless the context otherwise requires, in the regulations:

- A. “Commission” means the Kayenta Township Commission.
- B. “Individual” means a natural person.
- C. “Interest” means the interest of any grantee, lessee, permittee, assignee, sublessee, franchisee, or transferee, whether of the whole interest or less than the whole interest in a lease, including the interests of parties to a joint venture or operating agreement.
- D. “Period” means the reporting period for each particular tax.
- E. “Township” means the Kayenta Township.

Section 8.103. Lay and Collect Taxes.

When appropriate, the Township will submit to the Commission proposed resolutions to lay and collect taxes on goods, services, or property both tangible and intangible, on income from whatever source derived, and on transactions, sales, inventories, and wages completed or earned, and other measures of economic activity or engagement within the Township. The Commission will oversee tax policy and the administration of the tax laws.

Section 8.104. Township.

The Town Manager shall exercise the powers granted to the Township and may employ or engage those persons qualified by education and experience necessary to discharge the duties of the office and may delegate authority and duties among such persons.

Section 8.105. Proposal of Regulations.

The Township may publish notice of proposed regulations in order to provide interested parties an opportunity to comment. Notice of the proposal will be published and the text made available according to Paragraph 8.107. The notice will invite written comments and give a deadline for their submission not less than thirty (30) days after the first publication of notice. The Township may choose to hold a public hearing.

Section 8.106. Adoption of Regulations.

When appropriate, the Commission will adopt regulations. in accordance with the rules in this paragraph.

- A. Formal adoption. Regulations must be formally adopted in a resolution by a majority vote of the Commission.
- B. Manner of amendment. Regulations must be amended in the same manner as they are adopted and promulgated.

Section 8.107. Promulgation of Regulations.

Following their adoption by the Commission in accordance with Paragraph 8.106, regulations will be promulgated according to these rules.

- A. Notice required. The Regulations will be effective only upon the publication of a notice in accordance with subparagraph (B).
- B. Publication defined. Publication means to publish a notice by public posting or published in the newspapers for thirty (30) days and may include notice by mail to designated individuals on the basis of a registration list which is reasonably current. The notice will identify or otherwise describe the subject regulations and where they may be obtained.
- C. Effective dates. Regulations become effective thirty (30) days after the first publication of notice or on the dates otherwise specified therein.
- D. Availability of text. A copy of the regulations will be filed and made available for public inspection at the Township and will be mailed to any person making a written request.

Section 8.108. Public Rulings and Advices.

When appropriate, the Township may issue general rulings, procedures, and advices for the information and guidance of taxpayers. In preparation thereof, the Township may inquire of persons regarding relevant facts, comments, and proposals, providing such persons a reasonable time for their submission.

Section 8.109. Requests for Private Ruling.

In connection with determining any obligation under this subchapter, a taxpayer, designee, or representative may request a private ruling from the Township.

- A. Authority. The Township has discretionary authority to issue declaratory rulings concerning the validity or application of the Township tax laws, the regulations, and other rules with respect to any property, person, transaction, activity, or statement of facts. This discretion will be exercised in the light of all relevant circumstances, and with a view to issuing rulings to the extent consistent with the proper and efficient

administration of the tax laws. However, no ruling will be given in any matter already under examination or appeal.

- B. Form of request. The request must be made in writing to the Township, must state the ruling sought, and must contain a complete statement of the facts relied on, together with any information and documents necessary to present those facts. The request must identify the taxpayer.
- C. Effect. Private rulings are binding on the Township with respect to the facts and issues presented and ruled upon, but only as to the subject property, transactions, or the person requesting the ruling. Private rulings are appealable actions.

Section 8.110. Procedural Rules for Appeal from Assessments and Actions.

A. General Provisions.

1. In all administrative and judicial proceedings governed by this Chapter, the orders, assessments, factual findings, and legal conclusions of the Township or the Commission or its officers are presumed correct unless the taxpayer demonstrates otherwise.
2. In all factual hearings, the taxpayer has the burden of proving, by preponderance of the evidence, the existence of an asserted fact, except where another standard is provided by statute.
3. Appeals from assessments and denials of refund shall be made first to the Town Manager according to procedures established herein and in regulations.
4. The failure to proceed to a next required level of review under this section shall constitute a waiver of any further appeal pursuant to subsection 2, subsection 3, or subsection 4.

B. Conference.

1. Any appeal shall be commenced by filing a request for a conference with the Town Manager. The Town Manager, after receiving a timely request and within a reasonable time, shall confer with the taxpayer. The conferee, auditor, representative of the Financial Department and the taxpayer may agree on a suitable location for the conference or may agree to hold the conference by telephone and to exchange written documentation by mail or electronic mail. The conferee and taxpayer may agree to confer more than once.
2. The request for a conference must identify the dispute notice of assessment or notice of denial of refund or notice of other adverse action, state the determination sought, and contain a short and plain statement of the relevant facts and law.

- a. The taxpayer may request a stay of payment of taxes during the period that it seeks review of a notice under this section.
 - b. Such a request for stay must be made in writing prior to the time payment is due.
 - c. The conferee may grant a stay of payment of taxes for good cause shown.
 - d. A stay of payment shall expire pursuant to the terms of a notice lifting the stay, or upon entry of a final order. Payment is due within ten (10) days after the expiration of the stay.
 - e. Under appropriate circumstances, a stay of payment granted under this paragraph may be conditioned on the posting of a bond or provision of other security, or on the creation of a lien.
3. If the conferee and the taxpayer resolve any dispute factual or legal issue, then the conferee shall secure a written waiver from the taxpayer stating the basis of the agreement and stating that the taxpayer waives its right to further administrative or judicial review of that issue. No formal record of the conference need be maintained.
 4. Within sixty (60) days following the conclusion of the conference, the conferee will issue a written conference decision. If the conferee denies in whole or in part the relief that the taxpayer requests, then the decision shall state the basis for the denial of relief. Within thirty (30) days after the issuance of the decision of the conferee, the taxpayer may appeal the decision to a Hearing Officer in accordance with the procedures provided in subsection (C) of this section.

C. Administrative Hearing Officer.

1. There is hereby established the position of Administrative Hearing Officer who will conduct hearings for the Township in this phase of the hearing process on an on-call basis. The Administrative Hearing Officer ("Hearing Officer") shall work for the Township on a contractual basis; serving at times required for hearings and shall be paid for his/her services. The cost for the Hearing Officer shall be paid by the Township.
2. Appeal to the Hearing Officer commences upon the timely filing of the appeal.
 - a. The taxpayer's request for relief was denied under subsection (B) of this section.
 - b. In the case of a taxpayer's appeal involving a request for abatement of an assessment, the taxpayer must pay the taxes, unless a stay of payment was granted and remains in effect in accordance with subsection (B).
 - c. The taxpayer must file a request for a hearing before a Hearing Officer within thirty (30) days of the issuance of a conference decision.

- d. A request for a hearing before a Hearing Officer must be in writing and contain short and plain statement of the facts and law forming the basis for the relief sought. The taxpayer, or its authorized representative, must sign the request for hearing.
 - e. The Hearing Officer, after receiving the request for a hearing, will endorse the request with the date of filing and proceed to set a time for entry of pre-hearing orders.
 3. The Hearing Officer has the authority to enter pre-hearing orders. When necessary, the Hearing Officer may confer with the parties before entering a pre-hearing order. Such order may, for example, eliminate or narrow disputes concerning questions of fact or law, establish identities and subject matter of testimony of witnesses, require the identification and discharge of documents, or provide for the time, place and duration of hearings. Pre-hearing orders will control the course of the hearing.
 4. At the request of any party, the Hearing Officer shall issue a subpoena for the attendance of witnesses at hearings and for the production of books, records, maps, documents, or physical evidence.
 - a. Action to quash. Any witness subject to a subpoena may petition the Hearing Officer to vacate or modify the subpoena on the witness. The Hearing Officer shall promptly notify the party who requested the subpoena and proceed to rule on the petition. The Hearing Officer may investigate the grounds of the petition or, upon the petition itself, may deny or grant the petition, in whole or in part. The Hearing Officer's ruling on the petition to quash subpoena are not subject to interlocutory appeal to any court.
 - b. Non-compliance. Failure to comply with a subpoena issued by the Hearing Officer shall subject the non-complying witness or party to sanctions.
 5. Conduct of Hearing. The Hearing Officer shall preside over the hearing and conduct them according to the following provisions.
 - a. Service of Documents. All documents filed by any party at a hearing shall be served personally or by first class mail, postage prepaid, at the last known address, on all parties, including the Township, and proof of service must be filed on record.
 - b. Evidence, witnesses, and record.
 - i. Sworn testimony. Oral evidence shall be taken only on oath or affirmation.
 - ii. Witnesses. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach any witness regardless of which

party first called the witness to testify, and may rebut any evidence presented. A party, a party's employee, or a party's agent, may be called by the opposing party and be examined as if under cross-examination. The Hearing Officer may question any witness, or may call as a witness any person who is present at the hearing.

- iii. Privilege. Any privilege that applies in civil actions before Navajo courts shall be followed.
- iv. Admissibility. Any relevant evidence, including affidavits and other forms of hearsay, shall be admitted if such evidence is of the sort upon which responsible person are accustomed to rely on in the conduct of serious affairs. The Hearing Officer shall be liberal in admitting evidence, but objections to its admission, and comments or observations on its weight, are relevant in weighing the evidence. The Hearing Officer may deny admission of evidence that is irrelevant, untrustworthy, or unduly repetitious.
- v. The record. All evidence offered and made part of the record shall be the basis of the Hearing Officer's decision. The Hearing Officer shall not consider any other factual information, except for matters officially noticed.
- c. Failure to appear. Where after proper notice a taxpayer or its authorized representative fails to appear, the Hearing Officer may proceed with the hearing, dispose of the issues raised, and enter a final order.
- d. Continuances. Reasonable continuance may be granted for good cause.
- e. Proposed findings and conclusions. Prior to entering an order, the Hearing Officer shall afford the parties a reasonable time within which to submit any post-hearing memoranda, proposed findings of fact, and proposed conclusions of law.

6. Final order:

- a. The hearing conducted under this part concludes when the Hearing Officer enters findings of fact, conclusions of law, and a final order.
- b. The final order issued by the Hearing Officer shall be a matter of public record, and all final orders issued shall be available for public inspection.
- c. The final order issued by the Hearing Officer shall constitute the final action of the Commission and the Township.

Section 8.111. Procedural Rules for Collection.

In addition to the general rules and procedure provided in this subchapter, the Township or the Commission may by ruling or in regulations establish the guidelines and procedures for

the exercise of its power to attach and seize assets and the performance of its other collection duties in an effective manner comporting with due process.

Section 8.112. Procedural Rules for Examination.

In addition to the general rules and procedure provided in this subchapter, the Township may by internal policy establish the guidelines and procedures for the exercise of investigative authority and the conduct of inspections, examinations, and field and office audits.

Section 8.113. Internal Policy Matters.

In addition to the general rules and procedure provided in this subchapter, the Township may by internal policy establish the guidelines and procedures for conducting its business, administering the tax laws, organizing and operating its office, and for effectively discharging its duties and responsibilities, including assessment and enforcement.

Section 8.114. Presumption of Mailing.

Upon showing of certification of mailing by the Township, it shall be presumed that the taxpayer received the mailing in question.

Section 8.115. Recordkeeping.

- A. Every person or vendor shall keep full and true records of receipts and taxes collected for each period, in accordance with regulations and shall make these records available at the request of the Township or Commission.
- B. In the case of a person or vendor which is part of a corporation, partnership, association or other person, separate accounting records for the person must be maintained.
- C. Records required to be kept under this section must be preserved for six (6) years beyond the time payment of tax is made, or if no payment is due, for six years beyond the end of the period to which the records relate.
- D. The Auditor may require the taxpayer to provide and may examine any books, records, or other documents of any person who, in the opinion of the Auditor, might be liable for any tax under this Chapter, for any periods available to him under subsection (C) above.
- E. In order to perform any examination authorized by this Chapter, the auditor may issue an Administrative Request for the attendance of witnesses or for the production of documents, as provided by this Section.
- F. If within sixty (60) days of receiving a written request for information in the possession of the taxpayer, the taxpayer fails or refuses to furnish the requested information, the Auditor may, in addition to penalties prescribed under Sections 8-113, 8-114 or 8-115 of the Tax Administration Ordinance, impose an additional penalty of twenty-five (25%)

percent of the amount of any tax deficiency which is attributable to the information which the taxpayer failed to provide, unless the taxpayer shows that the failure was due to reasonable cause and not due to willful neglect.

- G. The Auditor may use any generally accepted auditing procedures, including sampling techniques, to determine the correct tax liability of any taxpayer. The Auditor shall ensure that the procedures used are in accordance with generally accepted auditing standards.
- H. The fact that the taxpayer has not maintained or provided such books and records which the Auditor considers necessary to determine the tax liability of any person does not preclude the Auditor from making any assessment. In such cases, the Auditor is authorized to use estimates, projections, or samplings, to determine the correct tax. Estimates by the Auditor shall be made on a reasonable basis. The existence of another reasonable basis of estimation does not, in any way, invalidate the Auditor's estimate. It is the responsibility of the taxpayer to prove that the Auditor's estimate is not reasonable and correct, by providing sufficient documentation of the type and form required by this Chapter or satisfactory to the Auditor.

Section 8.116. Examination and Audits.

For the purpose of determining an assessment, preparing a required return or form where none has been prepared or filed, determining the correctness of any required return or form, determining the liability of any person for taxes, determining the liability in law or in equity of any transferee or fiduciary of any person for taxes, or collecting any liability, the Township may make an inquiry and may:

- A. Examine any books, records, papers, maps, documents, or other data which may be relevant or material to the inquiry.
- B. Summon the person liable for the tax or required to file and/or pay, any officer, employee, or agent of that person, any person having possession, custody, or care of information relating to the business of the person liable for tax or required to file and/or pay, or any other person the Township may deem proper, to appear before the Township at the time and place named in the summons and to produce such information and materials, and to give such testimony, under oath, as may be relevant or material to the inquiry.
- C. Take such testimony of any such person, under oath, as may be relevant or material to the inquiry.

Section 8.117. Filing Requirements for Statutorily and Contractually Exempt Persons.

The Township may require any person claiming exempt status to file an affirmative statement of exempt status. With respect to any assessment date or period for which a return is not filed, the Township may require a person to file an affirmative declaration that it meets

the exceptions from filing, together with a statement of the amount of any excluded or exempt receipts and the facts on which the claim of exclusion or exemption is based. Upon written request and within a reasonable time allowed, the person must file the statement or declaration required. Failure to comply is subject to the penalties provided for in the Tax Administration Ordinance.

Section 8.118. Notice of Lien.

Public notice of a lien will be effective as to all property and rights to property of a taxpayer, business, or person if the description of the taxpayer, business, or person is sufficient to put a reasonable person on inquiry to ascertain the existence of a lien on the property.

Section 8.119. Service and Enforcement.

Subpoenas and summonses will be served and enforced according to the following provisions.

- A. The Township will serve a subpoena or summons by an attested copy by certified mail or personal delivery to the person to whom it is directed, or if such mail is returned or the person cannot be found, left at the last and usual place of abode or business. On the hearing of an application for the enforcement of the summons, the certificate of service signed by the person serving the subpoena or summons will be evidence of the facts it states. When the subpoena or summons requires the production of books, records, papers, maps, documents, and other data, it will be sufficient if the items are described with a reasonable certainty.
- B. Whenever any person neglects or refuses to obey a subpoena or summons, or to produce books, records, papers, maps, documents, or other data, or to give testimony, as required, the Township may impose the sanctions provided by law. The Township may further apply to any court of competent jurisdiction for such order as it deems proper and not inconsistent with the law for punishment of contempts, to enforce obedience to the requirements of the subpoena or summons and to punish the person for his/her default or disobedience.

Section 8.120. Requests for Information.

The Township may require of any and all persons who own interests in leases granted or approved by the Navajo Nation or Township, who engage in business activity within the Township, or are otherwise subject to its jurisdiction, such information as the Township may deem relevant to the efficient administration of this subchapter. Upon a written request by the Township and after reasonable opportunity to comply, those persons must provide the information required. Failure to comply with a request for information will subject a person to the penalties provided for in the Tax Administration Ordinance.

Section 8.121. Required Information.

- A. General. Forms to be filed pursuant to this subchapter will be made available by the Township. Persons are responsible for requesting forms as needed. Any filing may be prepared on a clear copy of the official form or a substantially similar form approved by the Township. The information to be included in or filed with the forms will be prescribed in instructions and other rules. Failure to fully and adequately complete a form will subject a person to penalties under the Tax Administration Ordinance. Additional information may be required, sufficient to establish the qualification for any exclusion or exemption from or deduction claimed in the base, or to disclose the detail of transactions.
- B. Supplemental material. Supplemental documents may be required and are permitted. For example, statements filed with any federal, state, or local authorities which contain information substantially similar to that required herein may be attached to the form to clarify or support an entry, to disclose a method, to establish a qualification, to provide detail, or as otherwise appropriate. Such statement and other materials must be clearly identified, be referenced to the corresponding entry on the form, and be reconciled to the information therein.
- C. Attachments. Any additional information, supplemental material, or other attachment filed with a form is deemed a part of the form itself.
- D. Computations on returns. Rounding off to whole dollar amounts of money on returns and information provided by a taxpayer under this section will be permitted as provided in this subsection.
 - 1. When the instructions or return permit, a person may elect to enter any amount required to be reported on such return at the nearest whole dollar amount.
 - 2. The election not to use whole dollar amounts must be made at the time of filing the return, even if not timely filed. Such election may not be revoked after the time prescribed for filing such return, including extensions of time granted for such filing.
 - 3. The taxpayer's election shall be binding only for the period covered by that return and a new election may be made on a subsequent return.
 - 4. The provisions of subparagraph 1 of this subsection apply only to amounts required to be reported on a return. They do not apply to items which must be taken into account in making the computations necessary to determine such amounts.
- D. Signature. Any return, form, or other document which is required to be made or filed under this subchapter must be signed and verified by a written declaration made subject to the penalties set forth in the Tax Administration Ordinance.

Section 8.122. Place and Manner of Filing and Payment.

Taxpayers and other persons making filings and payments under this subchapter must comply with the following requirements:

- A. Place and address. All filings and payments must be delivered to the Kayenta Township office or mailed to: Kayenta Township, Post Office Box 1490, Kayenta, AZ 86033.
- B. Identification. Any payment must be marked with clear identification of the taxpayer, the return or other form, the assessment date or period, and type of liability for which the payment is being made.
- C. The payee. The check or other remittance must be made payable to the order of the Kayenta Township.
- D. Application of payments. Any payment received by the Township will be applied as described below. The Township will report to the taxpayer the application made and the resulting status of the taxpayer's account and will issue a notice of assessment for any unpaid amount.
 1. When a payment is included with a timely filed return, the payment shall be applied first to the tax due for the current period, then to any outstanding penalty, then to any outstanding interest, then to any tax owed for any prior period.
 2. When a payment is included with a return which is filed late, the payment shall be applied first to any penalty due for the specified tax period, then to any interest due for the specified tax period, then to any tax due for the specified tax period.
 3. When a payment is made with no identification as to application to a particular tax, tax period, or assessment date, the payment shall be applied first to any and all penalties owed for any tax or period, then to any and all interest owed for any tax or period, then to any tax owed for any period.
 4. When a payment is made with respect to an audit assessment issued by the Township, the payment shall be applied first to any accrued penalties associated with the assessment, then to any accrued interest associated with the assessment, then to any tax associated with the assessment.

Section 8.123. Due Dates and Time Determination.

The following rules apply in the determination of dates and time:

- A. Due date. Due dates are those stated in the subchapters or specified in instructions, forms and notices of the Township. If a due date falls on a Saturday, Sunday, or a legal holiday, then the due date becomes the next working day. Holidays of the Navajo Nation are the same as the federal holidays, with five exceptions: the Nation does not observe Columbus

Day, and it celebrates Navajo Sovereignty Day on the 4th Monday in April, Navajo Memorial Day on June 1, Navajo Code Talker Day on August 14, and Navajo Family Day on the Friday after Thanksgiving. When a holiday falls on a Saturday or Sunday, it is observed on the adjacent Friday or Monday, respectively.

- B. Action by mail. Except as provided in Paragraph 8.123, when a taxpayer elects to act by mail, the date of the action is determined by the postmark. For instance, mail postmarked by midnight of the date due is timely made and is deemed made as of that day.
- C. Computation of time. In computing and determining the day on which a period of time ends and action is due, the first day is not counted and the actual days elapsed, including Saturdays, Sundays and holidays, are counted.
- D. In order to be considered filed with the Township, for purposes of determining timeliness of filing, an actual, original signed return or report must be submitted to the Township. The submission of facsimiles, PDF filings, or other types of email or electronic filing will not constitute filing.

Section 8.124. Rule for Liabilities Over \$10,000.

If the tax due with the return or on a specified date is more than \$10,000, the payment must be received by the Township not later than the due date and the rule in Paragraph 8.123(B) regarding postmarks does not apply. A taxpayer shall remit by wire or other direct bank transfer according to the instructions of the Township.

Section 8.125. Interest Rates and Application.

Interest is imposed on any unpaid tax.

- A. Duration of accrual. Interest is computed from the date the tax was first due (without regard to any extension of time or stay of payment) to the date payment is received.
- B. Interest on Underpayments. The rate of interest will be equal to the rate presently used by the Internal Revenue Service for an underpayment by an individual. The Township will issue a quarterly advice to coincide with the Internal Revenue Service announcement in which the current and past rates for both an underpayment and overpayment are listed.
- C. Interest on refunds. The rate of interest will be equal to the rate presently used by the Internal Revenue Service for an overpayment by an individual.

Section 8.126. Designation of Individual.

Each taxpayer must designate and provide the mailing address of a natural person for the purposes of notice, together with such other information as may be required by form and instructions.

- A. More than one tax. A taxpayer obligated to designate under more than one tax may designate one individual as the designee for all such tax statutes or may designate separate individuals as the designees for each tax. Only one individual is permitted to be a designee for each tax.
- B. Joint or common undertaking. Participants in a joint or common undertaking, regardless of their ownership or agreement, or the form of their organization, must designate one individual. If one participant is the operating agent or charged with the management of the undertaking, the designation must be made by that participant.
- C. Additional individuals. A taxpayer may also name other individuals to receive the tax publications of the Township. The Township will keep a reasonably current list and will be diligent in mailing to such individuals, notices, regulations, rulings, instructions, and other information in a timely manner.

Section 8.127. Charges for Administrative Costs.

- A. Notice. Upon determining any charges for costs, the Township will issue a notice of assessment to the taxpayer. Such assessment shall constitute an adverse action.
- B. Costs. Costs will be limited to direct costs and out-of-pocket expenses incurred in collection efforts beyond the ordinary office functions, duties, and notices for collecting taxes, and the usual legal expenses for obtaining local court judgments. On good cause shown, the Township may adjust the assessment.
- C. Good Cause. A mere mistake, the absence of negligence or of intentional disregard of the regulations, or the presence of substantial issues of interpretation, especially in the case of a deficiency arising upon examination of a return which was timely filed, and all surrounding facts and circumstances, including the pattern of compliance of the taxpayer, may be given due weight in determining good cause.

Section 8.128. Suspension and Exclusion.

- A. In addition to possible criminal prosecution under Title 17 of the Navajo Nation Code, any person, including employees or agents in the course of their employment or agency, who engages in the prohibited acts set forth in subparagraph (C) of this section may have its rights to engage in productive activity within the Township suspended, either temporarily or permanently, utilizing the procedures set forth in the Tax Administration Ordinance.
- B. In addition, any non-member who engages in the prohibited acts set forth in subparagraph (C) of this section may be excluded from land subject to the jurisdiction of the Township and/or the Navajo Nation in accordance with procedures set forth in Title 17 of the Navajo Nation Code.
- C. The following are prohibited acts:

1. Forcibly, or by bribe, threat or other corrupt practice, obstructing or impeding the due administration of any tax;
2. Willfully failing to comply with a subpoena or summons duly issued pursuant to this subchapter;
3. Committing fraud, or knowingly assisting another in the commission of fraud, with the intent to evade or defeat the assessment or collection of any tax, interest, penalty, or costs imposed or assessed; or
4. With knowledge and intent, falsely verifying by written declaration any return, form, or other document.

Section 8.129. Examination Procedure.

Upon completion of the examination of a taxpayer, the Township will provide the taxpayer with a written statement of findings for any determination which alters a liability for tax, interest, or penalties, and will issue a refund or a notice of assessment for any amounts overpaid or due. If no such determination is made, the Township may issue a letter stating that there is no change for the assessment date or period examined.

Section 8.130. Notice of Assessment.

- A. A notice of assessment may arise from an initial assessment of taxes, from an estimate of the taxes due when a required return has not been filed, from a deficiency in the amount of taxes reported or paid determined upon examination of a declaration, or from an application of interest, penalties, or charges for costs.
- B. The notice of assessment will set forth the requirements for payment and for appealing the assessment in accordance with the rules and procedures for Administrative Appeals.
- C. At any time prior to the payment of an assessment or conclusion of an appeal, the Township may amend the notice of assessment. When such amendment is made, the amended assessment may cover all periods covered by the original assessment.
- D. When it appears that a taxpayer has made an overpayment, the Township will remit a refund. In this situation, the one-year deadline for the taxpayer to request a refund shall not apply; the taxpayer shall be eligible for any refund/credit for overpayment arising during the periods covered by the assessment.

Section 8.131. Procedure for Refunds.

- A. Claim. Any taxpayer who has made an overpayment may, within one (1) year after the alleged overpayment is received by the Township, file a written claim for refund with the Township. However, no claim for refund need be filed if the basis therefor has already

been established under abatement or asserted in an appeal under this subchapter. An issue determined in such an appeal may not be reopened by filing a claim for refund.

- B. Adjustment for another tax. The Township may provide for a refund or credit where taxes paid for one period thereafter requires adjustment on account of other taxes for concurrent periods which are later paid.
- C. Amended return. A claim may take the form of an amended return for the period for which the overpayment was made. The return must contain a clear statement of the amount of the refund being claimed and the basis therefor.
- D. Offset. Upon notice from the Township that an overpayment has been made, a taxpayer may offset against the tax due for a current period. A copy of the overpayment notice must be attached to the return.
- E. Appeal. Denial of a refund claim shall be considered an adverse action.
- F. Determination. If the Township determines, either on a claim for refund under this paragraph or in an appeal on a claim or from an assessment, that the taxpayer has made an overpayment, and no appeal is taken, the Township shall refund the overpayment and applicable interest to the taxpayer.
- G. Order on appeal. Where an action of the Township is appealed, the Township shall make a refund of only the overpayment determined by the order in that appeal, plus the applicable interest.
- H. Application to unpaid taxes. If a taxpayer entitled to a refund owes unpaid taxes, the refund shall be offset and reduced by such unpaid amounts.
- I. Prohibition against any other manner of refund. No refund of or credit for taxes paid shall be made or allowed to any person by any court or agency other than as provided in this paragraph.

Section 8.132. Delinquent Liabilities.

All taxes assessed are a debt due and owing the Township from the taxpayer or other person. If an assessment is not paid when due, the Township may, in addition to the remedies under this subchapter, maintain an action for itself against the delinquent party for the collection of the liability, costs, and other lawful charges thereon. In such action, the Township will have the benefit of all laws which provide remedies against property or rights to property, real or personal, of the person liable for the assessment.

Section 8.133. Collection.

A notice of assessment requires the payment of the amount due by the date stated therein and is collectible as of that date without further notice. Any amount of taxes which are reported

in a return filed by a taxpayer and not paid by the due date is collectible as of that date without further notice and shall accrue interest and penalties until paid. Absent an official stay of payment, any collectible amount is a delinquent liability, and a collection action will commence upon issuance of a demand for payment to the delinquent taxpayer.

Section 8.134. Duties of the Finance Department.

The Finance Department is authorized and directed:

- A. To credit all tax monies received from the Township to the Tax Administration Suspense Fund.
- B. To keep separate accounts for the Fund and for any escrow accounts established within the Fund.
- C. To be accountable to the Township for the accounts and their disposition by regular and timely reports. The Township will timely reconcile the respective accounts.
 - 1. The reports are confidential and subject to the disclosure rule.
 - 2. The reports shall be made no less often than monthly, with quarterly summaries.
 - 3. The reports shall show the amounts deposited and disbursed during the month and will reconcile the beginning and ending Fund balances.
- D. To disburse refunds as directed by the Township.

Section 8.135. Establishment of Escrow.

The Township may establish escrow accounts with an acceptable fiduciary agency, and may prescribe the procedures and accountability required for the custody and management of the monies placed in those accounts.

Section 8.136. Effective Date.

These regulations shall become effective as of September 1, 2011.





**CHAPTER 8
KAYENTA TOWNSHIP TAX ORDINANCES**

**SUBCHAPTER 2
HOTEL OCCUPANCY TAX**

SECTION 8-201	TITLE.	2
SECTION 8-202	DEFINITIONS.....	2
SECTION 8-203	TAX IMPOSED.....	2
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HOTEL OCCUPANCY TAX ORDINANCE

SECTION 8-201 Title

This subchapter shall be known as Subchapter Two, Hotel Occupancy Tax, of Chapter 8, Kayenta Township Tax Ordinances.

History

KICS-72-11 (Sept. 12, 2011) adopted the HOT ordinance.

KTCM-10-15 (May 27, 2015) amended Rate of Tax and Tax Rate regulation

SECTION 8-202 Definitions

- A. "Hotel" means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist court, lodging house, inn, or rooming house, but does not include a hospital, sanitarium, nursing home, or a room in a dormitory operated by a religious organization, school or college for use by its students, faculty, or staff.
- B. "Commission" means the Kayenta Tax Commission.
- C. "Effective Date" means the date specified in Section 8-210.
- D. "Owner" means any person owning, operating, managing or controlling any hotel within the jurisdiction of the Kayenta Township.
- E. "Period" means a calendar quarter or any other reporting period established by regulation.
- F. "Township" means the Kayenta Township, the entity responsible for the administration of this ordinance.

SECTION 8-203 Tax Imposed

- A. A tax is imposed on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing two dollars (\$2) or more each day.
- B. The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person, except for those services related to cleaning and readying the room for use or possession.

SECTION 8-204 Rate of Tax

The rate of the tax imposed by this subchapter shall be eight percent (8%) and changed from time to time by the Commission.

SECTION 8-205 Collection and Remittance of Tax

- A. An Owner owning, operating, managing, or controlling a hotel shall collect for the Commission the tax that is imposed by this subchapter and that is calculated on the amount paid for room in the hotel.
- B. An Owner owning, operating, managing, or controlling a hotel shall remit to the Township the money collected for the tax that is imposed by this subchapter.

SECTION 8-206 Exception: Permanent Resident

This subchapter does not impose a tax on a person who has the right to use or possess a room in a hotel for at least 30 consecutive days.

SECTION 8-207 Return and Payment

On the last day of each period, an Owner required to collect the tax imposed by this subchapter shall pay the Commission the tax collected during the preceding period, and at the same time shall file with the Commission a return stating:

- 1. The total amount of the payments made for rooms at the Owner's hotel during the preceding period;
- 2. The amount of the tax collected by the Owner during the preceding period; and
- 3. Other information that the Commission requires to be in the return. Provided, that the Commission shall be authorized to assess against an Owner responsible for the collection of taxes under this subchapter, and that such assessments are presumed to be correct.

SECTION 8-208 Recordkeeping

- A. It shall be the duty of every Owner to keep accurate and complete books and records to which the Township representative shall at all times have full access during reasonable business hours.
- B. Records required to be kept must be preserved for six years beyond the time payment of tax is made, or if no payment is due, for six years beyond the end of the period to which the records relate.

SECTION 8-209 Severability

If any provision of this subchapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the subchapter which can be

given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

SECTION 8-210 Effective Date

This subchapter shall become effective as of October 1, 2011.



**KAYENTA TOWNSHIP
HOTEL OCCUPANCY TAX REGULATIONS**

SECTION 8.201	TITLE
SECTION 8.202	TAX IMPOSED
SECTION 8.203	TAX RATE
SECTION 8.204	ADMINISTRATION
SECTION 8.205	TERMS AND USAGE
SECTION 8.206	LIABILITY FOR TAX
SECTION 8.207	CHARGES SUBJECT TO TAX
SECTION 8.208	CHARGES NOT SUBJECT TO TAX
SECTION 8.209	PACKAGE DEALS
SECTION 8.210	EXEMPTIONS
SECTION 8.211	GROSS RECEIPTS DETERMINATION
SECTION 8.212	FILING OF RETURNS
SECTION 8.213	PAYMENT OF TAX DUE
SECTION 8.214	OTHER RETURN REQUIREMENTS
SECTION 8.215	EFFECTIVE DATE

Section 8.201. Title.

This subchapter shall be called the Kayenta Township Hotel Occupancy Tax Regulations (“Regulations”).

Section 8.202. Tax Imposed.

A tax is imposed for each period on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing \$2 or more each day. Provided, however, that no tax shall be imposed upon any person who receives the complimentary use of a room and does not pay for that use.

Section 8.203. Tax Rate.

Effective June 1, 2015, the rate of tax shall be eight percent (8%) of the price paid for a room in a Hotel as defined below in Section 8-205.

Section 8.204. Administration.

The Kayenta Township is empowered to administer this tax. See the Kayenta Township Tax Administration Regulations for general administrative provisions and procedures.

Section 8.205. Terms and Usage.

Subject to the definitions contained in the Kayenta Township Tax Administration Regulations and subsequent paragraphs of this subchapter, and unless the context otherwise requires, in this subchapter the following terms are used for the meanings given.

- A. “Charges for personal services” means charges which are unrelated to the cost of the actual occupancy of the room or rooms. Charges for personal services do not include charges which are related to the cleaning and preparing a room for occupancy.
- B. “Commission” means the Kayenta Township Commission.
- C. “Gross receipts” means amount paid by the lodger for charges related to the cost of the actual occupancy of the room or rooms. “Gross receipts” does not include any occupancy tax paid by the lodger.
- D. “Hotel” means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist court, lodging house, inn, or rooming house, but does not include a hospital, sanitarium, nursing home, or a room in a dormitory operated by a religious organization, school or college for use by its students, faculty, or staff.

- E. "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms in a hotel for any purpose.
- F. "Owner" means any person owning, operating, managing or controlling any hotel within the jurisdiction of the Kayenta Township.
- G. "Period" means a calendar quarter. The first quarter is composed of the months of January, February, and March; the second quarter is composed of the months of April, May, and June; the third quarter is composed of the months of July, August, and September; and the fourth quarter is composed of the months of October, November, and December.
- H. "Person" means any organization, whether it be a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, corporation, or government (other than the government of the Navajo Nation), or any part, division, or agency of any of the foregoing, and an individual or group of individuals.
- I. "Room" means any room in a hotel for the use of which the hotel receives consideration.
- J. "Tax" means the Hotel Occupancy Tax.

Section 8.206. Liability for Tax.

The Owner is liable for taxes assessed whether or not the Owner collects the tax from the person. In the event the Owner fails to separately state and collect the tax from the person, the tax due will be computed based on the gross receipts.

Section 8.207. Charges Subject to Tax.

All charges for items or services, other than personal services or charges for the use of a telephone, which are furnished in connection with the actual occupancy of the room, are subject to the hotel occupancy tax. The taxable charges include charges for the use of a television and charges for the furnishing of additional beds or cots. These charges are includable within the tax base whether or not separately stated.

Section 8.208. Charges not Subject to Tax.

Charges for personal services are not subject to the hotel occupancy tax if they are separately stated. These include, but are not limited to, the cost of food served by the hotel, charges for room service, messenger service, and valet service.

Section 8.209. Package Deals.

If a hotel includes meals, admission to tourist attractions or any other unrelated benefit in the charge for lodging, hotel occupancy tax must be paid on the entire amount. Only if these

charges are separately stated on the bill to the customer may they be deducted from the amount subject to tax.

Section 8.210. Exemptions.

No tax is imposed on a person who has the right to use or possess a room in a hotel for at least 30 consecutive days.

Section 8.211. Gross Receipts Determination.

The tax shall be reported for each period on the following bases:

- A. In general. The calculation of hotel gross receipts for the period, and the recognition of the includable hotel gross receipts, will be made on the basis of the methods regularly applied in maintaining the books and records of the Owner.
- B. Improper method. If there is no method, or a method is not regularly applied or does not clearly reflect hotel receipts, the Commission will apply such method or methods as it determines will clearly reflect hotel gross receipts.
- C. Special methods. Where a special method is used to calculate hotel gross receipts or to recognize gross receipts, it must clearly reflect gross receipts, or such method will be used as is determined by the Commission to clearly reflect gross receipts.
- D. Change of method. A method must be used consistently from period to period, and any change of method must be approved by the Commission.

Section 8.212. Filing of Returns.

The return required to be filed under this subchapter is the Hotel Occupancy Return(s), Form 200 SF or Form 200 LF.

- A. Return required. The return will report hotel gross receipts and the tax due for the period and must be filed for each period by every Owner. An Owner who owns, operates, manages, or controls three or more hotels in the Navajo Nation must file the 200LF. If the number of hotels reported is two or less, the 200SF may be filed.
- B. Form and instructions. Forms and instructions will be mailed to any person making a written request. A return may be filed on a clear copy of the official form.
- C. Time and place for filing. For a given period, the return is due on or before the last day of the following period. Example: The return for the period ending March 31 must be filed on or before the last day of June. It must be filed with the Finance Department of the Kayenta Township.

Section 8.213. Payment of Tax Due.

The tax is due and payable at the time and place for filing the return.

Section 8.214. Other Return Requirements.

Each owner must file a Form 201 annually. In addition, each hotel is responsible for requiring exempt lodgers to complete a Form 202 exemption certificate.

Section 8.215. Effective Date.

These regulations shall become effective as of June 1, 2015.





**CHAPTER 8
KAYENTA TOWNSHIP TAX ORDINANCES**

**SUBCHAPTER 3
BUSINESS SALES TAX**

SECTION 8-301	TITLE
SECTION 8-302	PURPOSES
SECTION 8-303	NONDISCRIMINATION
SECTION 8-304	DEFINITIONS
SECTION 8-305	TAX IMPOSED
SECTION 8-306	GOODS DELIVERED OUTSIDE OF KAYENTA
SECTION 8-307	RATE OF TAX
SECTION 8-308	EXEMPTIONS AND DEDUCTIONS
SECTION 8-309	AVAILABILITY OF EXEMPTION CONDITIONED ON COMPLIANCE WITH LAW
SECTION 8-310	EXEMPT SALES TO BE REPORTED
SECTION 8-311	EXEMPTION CERTIFICATES REQUIRED
SECTION 8-312	BUSINESS LICENSE FEE
SECTION 8-313	COLLECTION OF TAX
SECTION 8-314	SEVERABILITY
SECTION 8-315	EFFECTIVE DATE
SECTION 8-316	REPEALS

BUSINESS SALES TAX ORDINANCE

SECTION 8-301 Title

This Subchapter shall be known as Subchapter Three, Business Sales Tax Ordinance, of Chapter 8 of the Kayenta Township Tax Ordinances.

History

CJA-3-96 (Jan. 19, 1996)	The Navajo Nation Council approved the Kayenta Tribal Pilot Sales Tax Project and a plan of operation for such project.
CN-76-96 (Nov. 1, 1996)	The Navajo Nation Council approved an amendment to the Kayenta Tribal Pilot Sales Tax Project.
CJY-42-03 (July 25, 2003)	The Navajo Nation Council extended the Kayenta Tribal Pilot Sales Tax Project indefinitely.
KTC AU-35-02 (Aug. 18, 2002)	The KTC approved Amendment No. 1 to increase the rate of tax and other amendments.
KICA-20-04 (April 19, 2004)	The KTC approved Amendment No. 2 to adopt certain clarifications and improvements.
KTCS-73-11 (Sept. 12, 2011)	The KTC approved Amendment No. 3 to delete the tax administration provisions, which were incorporated into the new Kayenta Township Tax Administration Ordinance.
KTCJA-02-13 (Jan. 14, 2013)	The KTC approved Amendment No. 4 to adopt certain technical amendments.

SECTION 8-302 Purposes

The purposes of this Subchapter are:

1. To enhance the general well-being of the members of the Navajo Nation residing within the Township;
2. To promote the economic growth of the Kayenta Township;
3. To provide operating capital for the infrastructure development and maintenance within Kayenta Township;
4. To enhance the governmental capacity of the Township to meet the needs of its citizens and others for municipal and other governmental services in the Township; and
5. To support the capital improvements needs of the Kayenta Township.

SECTION 8-303 Nondiscrimination

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

SECTION 8-304 Definitions

As used in this Subchapter:

1. "Commercial Consumption" means the use connected with trade or commerce and includes:

- a. The use of services or products by retail establishments, hotels, motels, restaurants, warehouses, and other commercial establishments;
 - b. Transportation of people or property by land, water, or air;
 - c. Agricultural uses unless specifically exempted by this Subchapter; and
 - d. Real property contracting work.
2. "Commercial Lease" means the lease or rental of any real property for consideration for use as office space, operation of a business, storage of vehicles, or residential occupancy for more than 30 days. Home site residential leases are not included in this definition.
 3. "Commission" means the Kayenta Township Commission.
 4. "Component Part" includes without limitation:
 - a. Poultry, dairy, and other livestock feed and their components;
 - b. Baling ties and twine used in the baling of hay and straw;
 - c. Fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales and for providing power for off-highway type farm machinery; and
 - d. Feed, seeds, and seedlings.
 5. "Compounded" means to form a whole product with new properties, to produce or create by combining two or more parts or elements or substances.
 6. "Contractor" means any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any road, highway, bridge, parking area, fence, livestock guard, gate, building, stadium, or other structure, airport, railway, or similar transportation facility; park, trail athletic field, golf course, dam, reservoir, canal ditch, culvert, 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; sewerage, water, coal, coal slurry, gas, or other pipeline; transmission line, radio, television, microwave, telephone, or other similar tower; water, oil, gasoline, fuel or other storage tank; shaft, tunnel, or other mining appurtenance; microwave station or similar facility; leveling, clearing, or other preparation of land; excavating of earth; drilling wells of any type, including seismograph shot holes or core drilling; or other structure, project, development, or improvement to real property, or to do any part thereof.

7. "Construction contractor" includes general contractors, subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.
8. A "taxable contractor" is a person who supervises, performs, or coordinates the construction with any subcontractors or specialty contractors, and is responsible for the completion of the prime contract.
9. "Medicine" means:
 - a. Insulin, syringes, blood sugar monitoring strips or devices, and any legend drug prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a licensed physician, surgeon or podiatrist:
 - i. A legend drug is a drug on a prescription.
 - ii. A "legend drug" is a drug that bears the statement CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT PRESCRIPTION.
 - b. Any medicine or compounded product dispensed to patients in any hospital, infirmary, or clinic located within the exterior boundaries of the Township, provided that the medicine is dispensed by a registered nurse, pharmacist or licensed physician:
 - c. Any item used in the practice of traditional Navajo medicine, provided the item is used for such purposes:
 - d. Any medical oxygen, prosthetic devices, or other medical devices, monitoring devices, dentures, hearing aids, crutches, prescription eyeglasses and contact lenses, or any durable medical equipment primarily and customarily used for medical purposes, or stoma supplies prescribed by a physician or administered under the direction of a physician, registered nurse, or paramedic customarily used for medical purposes and not useful in the absence of illness, injury, or other medical condition.
 - e. "Medicine" does not include any alcoholic beverage.
10. "Person" means any organization, whether it be a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, limited liability company, corporation, or government, or any part, division, or agency of any of the foregoing, including enterprises and corporate entities owned by the Navajo Nation or by an individual or group of individuals.

11. "Purchase Price" means the amount paid or charged for tangible personal property or any other taxable item or service under Section 8-305, excluding only cash discounts taken or any excise tax imposed on such purchase by the federal government.
12. "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.
13. "Retail sale" means:
 - a. Any sale within the Township or tangible personal property or any other taxable item or service under Section 8-305, other than a "sale for" (meaning wholesale) resale of such property item, or service by a retailer or a wholesaler to a user or consumer.
 - b. "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if such sales have an average monthly sales value of \$1,000 or more.
14. "Retailer" means:
 - a. Any person in a regularly organized retail business in tangible personal property or any other taxable item or service under Section 8-305, and selling to the user or consumer and not for resale (meaning wholesale), and includes commission merchants, auctioneers, and all persons regularly engaged in the business of selling to users or consumers within the Township.
 - b. "Retailer" does not include contractors, peddlers, farmers, gardeners, stockmen, poultry men, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.
 - c. When in the opinion of the Commission it is necessary for the efficient administration of this Subchapter to regard salespersons, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold to them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers, the Commission may regard such dealers, distributors, supervisors, or employers as retailers for purposes of this Subchapter.
15. "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable item or service under Section 8-305 for a consideration. It includes without limitation:
 - a. Installment and credit sales;

- b. Any closed transaction constituting a sale;
 - c. Any sale of electrical energy, water, gas, services, or entertainment taxable under this Subchapter;
 - d. Any transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price;
 - e. Any transaction under which a right to possession, operation or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if an outright sale were made;
 - f. Any "construction" meaning addition to, subtraction from, alteration, repair, improvement, movement, wrecking, or demolishing any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof for compensation; and
 - g. Professional services (but does not include labor costs or delivery charges exempted under Section 8-308).
16. "Nation" means the government of the Navajo Nation and the lands subject to its jurisdiction. For the purposes of this section, the term "Nation" does not include enterprises or corporations owned by the Navajo Nation or any of its political subdivisions.
17. "Peddler" means a person who acquires or offers goods for sale within the boundaries of the Township, but does not operate an ongoing business from a fixed location or site within the boundaries of the Township.
18. "Service Industries" means work done for others as an occupation or business such as housecleaning, installation, maintenance, or repairs of tangible personal property done or guaranteed by a dealer or manufacturer.
19. "Storage" means any keeping or retention of tangible personal property or any other taxable item or service under Section 8-305 within the Township for any purpose, except sale in the regular course of business.
20. "Tangible personal property" means:
- a. All goods, wares, merchandise, produce and commodities;
 - b. All tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;
 - c. Water in bottles, tanks, or other containers; and

- d. All other physically existing articles or things, including property severed from real estate.
21. "Tangible personal property" does not include:
- a. Real estate or any interest therein or improvements thereon;
 - b. Bank accounts, stocks, bonds, mortgages, notes and other evidence of debt;
 - c. Insurance certificates or policies;
 - d. Personal or governmental licenses;
 - e. Water in pipes, conduits, ditches, or reservoirs; or
 - f. Currency or coinage constituting legal tender of the United States or of a foreign nation.
22. "Telephone" means cellular phones, telecommunications, facsimile machines, or any device that transmits voice or digital messages over a wire, via satellite or transmission to and from a transceiver.
23. "Township" means the Kayenta Township.
24. "Use" means:
- a. The exercise of any right or power over tangible personal property under Section 8-305, incident to the ownership or the leasing of that property, item, or service.
 - b. "Use" does not include the sale, display, demonstration, or detail of that property in the regular course of business and held for resale.
25. "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable item or service under Section 8-305, or to whom such payment or consideration is payable including all persons who do business on an ongoing business within the Township.
26. "Telecommunications" means the gross proceeds of sales or gross income derived from the business, including the gross income derived from tolls, subscriptions and services on behalf of subscribers or from the publication of a directory of the names of subscribers of the business of providing intra-Navajo Nation telecommunications services. Intra-Navajo Nation telecommunications services means transmitting signs, signals, writings, images, sounds, messages, data or other transmitted information that originates and terminates in the Navajo Nation. Telecommunications does not include

internet access that enables users to access content, information, electronic mail or other services other the internet.

SECTION 8-305 Tax Imposed

- A. There is levied a tax on the purchaser for the amount paid or charged on the sales or gross income derived from the sale of the following:
1. Retail sales of tangible personal property made within the boundaries of the Township. Sales by the Navajo Nation government or any political subdivision thereof and sales by corporations and enterprises owned by the Navajo Nation shall be fully subject to the tax imposed by this chapter at the rate established by the Commission. In cases where a person is partially owned by the Navajo Nation government or any of its subdivisions, corporations or enterprises, gross receipts shall be prorated if necessary;
 2. Professional services, but does not include retail labor costs and delivery charges exempt under Section 8-308 performed within the boundaries of the Township;
 3. Construction on real property within the boundaries of the Township;
 4. Amounts paid to common carriers or telephone or telegraph corporations, whether the corporations are privately or publicly owned, for all transportation, telephone service (including cellular, cable, or satellite telephone service), and other telecommunications services provided to residential and commercial consumers within the Township;
 5. Gas, electricity, water, heat, coal, fuel oil, or other fuels sold or furnished for residential or commercial consumption;
 6. Meals sold, including all hot or cold food prepared for consumption on the premises or taken home, including within a Bed and Breakfast facility;
 7. Food for home consumption except for food exempt under Section 8-308;
 8. Admission to any place of amusement, entertainment, or recreation, including seats and tables reserved otherwise, and other similar accommodations, including the amusement income for coin operated games and juke boxes;
 9. Services for repairs or renovations of tangible personal property or services to install or incorporate tangible personal property into the construction of real property;
 10. Cleaning or washing of tangible personal property, including without limitation car washes, laundry or dry cleaning services;

11. All machines that are operated by or through coins, tokens, credit cards, debit cards or other similar payment devices;
 12. Leases and rentals of tangible personal property if the property site is within the boundaries of the Township, if the lessee took possession within the Township, or if the property is stored, used, or otherwise consumed within the Township;
 13. Long term rental income from hotels, trailers, trailer courts, apartments, townhouses, houses and housing subdivisions that are operated as a business;
 14. Tangible personal property stored, used or consumed within the Township;
 15. The gross income derived from tours that originate within the Township limits, including without limitation car and bus tours and air flights;
 16. The gross income derived from the business activity of operating a hotel, motel or bed and breakfast charging lodging and/or lodging space furnished to any person, for any period of not more than thirty (30) days;
 17. The gross income derived from a business activity for printing, faxing, copying, or publishing of printed materials; and
 18. Services including cosmetology and haircutting, house and carpet cleaning, and tax preparation and other small businesses, including those operated out of residences, whether or not permitted by the residential or home site lease.
- B. If the sales tax is not separately stated on the sales invoice and collected from the customer, the business is liable for the factored tax due.

SECTION 8-306 Goods Delivered Outside Kayenta.

“Out of Town sales” means sales of goods or services where possession or exchange of title is exchanged outside the boundaries of the Township. There shall be no sales tax on goods and services that are sold and delivered outside the Township boundary. Such goods and services include, but are not limited to:

1. Propane, concrete, and repair materials transported to an address outside the boundaries of the Township;
2. Retail installations of tangible personal property (not attached to real property) at an address outside the boundaries of the Township;
3. Delivery or freight charges to a destination outside the boundaries of the Township;

4. Shipping of tangible personal property to a point outside the boundaries of the Township;
5. Sales of tangible personal property when the purchaser does not take possession of the tangible personal property within the Township, but rather has the property shipped to an address outside the boundaries of the Township;
6. If the purchaser takes possession of the tangible personal property within the boundaries of the Township, the sale is not considered an out or town sale. and therefore not exempt from retail sales tax; or
7. The business or person or vendor shall maintain a record of the out or town shipment in a written form such as an address on the invoice, shipping costs relative to the delivery to an address outside of the Township, postal receipts. or common carrier charges.

SECTION 8-307 Rate of Tax

The tax imposed by the Township is imposed at a rate of not less than three percent (3%). nor more than eight percent (8%), which shall be specifically established by regulations promulgated by the Commission. Until another rate is established. the rate shall be six percent (6%) of the applicable gross receipts from all retail sales.

SECTION 8-308 Exemptions and Deductions

A. The following sales and uses are exempt from the taxes imposed by this Subchapter.

1. Sales of medicine and emergency and non-emergency medical transportation;
2. Purchases of food with food stamp coupons issued by the United States Department of Agriculture under the Food Stamp Act of 1977 (P.L. 95-113) or purchases paid for by vouchers issued under Section 17 of the Child Nutrition Act (P.L. 95-627 and P.L. 99-669);
3. Sales of meals served to schools, churches, or charitable institutions;
4. Sales by religious or charitable institutions in the conduct of their regular or ordinary religious or charitable functions or activities;
5. Property brought into the Township by a nonresident for his or her own personal use or enjoyment while within the boundaries of the Township;
6. Isolated or occasional sales by persons not regularly engaged in the business of selling same;
7. Sales of newspapers or newspaper subscriptions;

8. Tangible personal property, other than money, traded in as full or part payment of the purchase price;
 9. Sales of motor fuels and special fuels, such as jet fuel, gasoline or diesel fuel.
 10. Sales or use of property which the Township is prohibited from taxing under the laws of the Nation or applicable laws of the United States;
 11. Property stored within the Township for resale;
 12. Construction subcontracting within the Township, provided the subcontractor has written evidence that he is working for a taxable, licensed construction contractor within the Township;
 13. A farm or ranch operation may exclude from its gross receipts any amount derived directly from farming or livestock activities within the Township.
- B. The following shall be deducted from gross receipts on which the sales tax imposed by this Subchapter:
1. A vendor may exclude sales taxes already paid by another vendor where the sales tax is separately stated on an invoice;
 2. The cost of raw materials imported into the Township to be used in the process of manufacturing goods;
 3. Labor costs directly related to retail installations, service industries and construction contracting; and
 4. Delivery charges.

SECTION 8-309 Availability of Exemption and Deductions Conditioned on Compliance With Applicable Law

The availability of any of the exemptions and deductions specified in Section 8-308 of this Subchapter is strictly conditioned on compliance with this Subchapter, other Township laws and regulations, and any other applicable Navajo or federal law and regulations.

1. A person or vendor must be in compliance with the requirements of the Navajo Preference in Employment Act, the Navajo Business Procurement Act, the Navajo EPA or any other law of the Navajo Nation or the Township.
2. In the event that a person or vendor is not in compliance with Subsection (1) above, the Commission shall not allow any of the exemptions and deductions specified in Section 8-308 to the non-complying person or vendor.

SECTION 8-310 Exempt and Deductible Sales to be Reported

The sales or uses exempt or deductible under Section 8-308 shall be reported to the Township by the seller, vendor, or purchasers, as the case may be. The Township shall disallow any exemption or deduction included in this section upon failure by the seller, vendor, or purchaser to report the full amount of such exempt sales.

SECTION 8-311 Exemption Certificates Required

- A. For the purpose of the proper administration of this Subchapter and to prevent evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal property or any taxable item or service subject to tax pursuant to this Subchapter and sold by any person for delivery within the Township is sold for storage, use, or other consumption in the Township unless the person selling such property, item or service has obtained from the purchaser an exemption certificate signed by and bearing the name and address of the purchaser to the effect that the property, item, or service was exempted under this Subchapter.
- B. The Commission, by regulation, shall define the procedure to be utilized in applying for and obtaining such exemption certificates, and shall further determine the information required to be contained therein.

SECTION 8-312 Business License Fee

- A. All persons doing business in the Township shall pay a business license fee of \$100 per annum notwithstanding the lack of a business site lease. All persons operating a business in a location within the Township shall have a valid business license before conducting business.
- B. It is unlawful for any person required by this Subchapter to collect sales or use tax, to engage in business with the Township without first having obtained a license to do business. This license shall be granted and issued by the Township. The license is not assignable and is valid only for the person in whose name it is issued until that person ceases to do business or changes his or her business address, or until the license is revoked by the Commission. Such license shall be granted only upon application stating the name and address of the applicant and other information the Township may require. If business is transacted at two or more separate places by one person, a separate license for each place of business shall be required. Licenses shall be renewed annually. The Commission shall, on reasonable notice and after a hearing, revoke the license of any person violating any provisions of this Subchapter. Any person required by this Subchapter to collect sales or use tax within the Township without having secured a license to do so shall be deemed to have interfered with the administration of Township taxation. No license is required for any person engaged exclusively in the selling of commodities which are exempt from taxation under this Subchapter.

- C. Each person filing contract bids with the Township or any of its political subdivisions for sale of tangible personal property or any other taxable item or service under this Subchapter shall include with the bid the sales tax license number issued to that person under Subsection (A).

SECTION 8-313 Collection of Tax

- A. Each vendor is responsible for the collection of the sales or use tax imposed under this Subchapter. The vendor is not required to maintain a separate account for the tax collected, but is deemed to be a person charged with receipt, safekeeping, and transfer of public moneys.
- B. Each person storing, using or consuming tangible personal property under Section 8-305 is liable for the use tax imposed under this Subchapter.
- C. If any sale of tangible personal property or any other taxable item or service under Section 8-305 is made by a wholesaler to a retailer, upon the representation by the retailer that the personal property purchased is purchased by the retailer for resale, and the personal property thereafter is not resold, the wholesaler is not responsible for the collection or payment of the tax imposed on the sale, but the retailer is solely liable for the tax.
- D. Each vendor shall pay or collect and remit the sales and use taxes imposed by this Subchapter, if within the Township such vendor or its agent or other representative:
 - 1. Has or utilizes an office, distribution house, sales house, warehouse, service enterprise, vending machine, home sales location, billboard, or other place of business;
 - 2. Maintains a stock of goods;
 - 3. Regularly solicits orders whether or not such orders are accepted within the Township, unless the activity in the Township consists solely of advertising or of solicitation by direct mail;
 - 4. Regularly engages in the delivery of property in the Township other than by common carrier or United States mail; or
 - 5. Regularly engages in any activity in connection with the leasing or servicing of property located within the Township borders.
- E. If none of the conditions listed under subsection (D) exist, the vendor is not responsible for the collection of the use tax, but each person storing, using, or consuming tangible personal property purchases outside the Township and brought within the Township is responsible for remitting the use tax.

- F. For purposes of collecting and enforcing the tax imposed by this Subchapter, a vendor will be deemed to have submitted to the civil jurisdiction of the Navajo Nation and the Township, if the vendor has done any of the acts listed in subsection (D) above, or if the vendor has intentionally reached into the Township in order to make a sale, or has otherwise acted so as to establish a jurisdictional nexus with the Township.
- G. Each vendor shall collect the sales or use tax from the purchaser, but the vendor may not collect as tax an amount, without regard to fractional parts of the one cent, in excess of the tax computed prescribed in this Subchapter.
- H. On all motor vehicle sales made by other than a regular licensed dealer, the sales or use tax shall be paid by the purchaser directly to the Township upon every sale of a motor vehicle subject to registration under the laws of the Nation or any state.
1. No resident purchasing a motor vehicle within or without the Township and subject to the civil jurisdiction of the Navajo Nation and the Township shall operate that motor vehicle within the Township without first paying the tax due on the sale.
 2. The Commission, by regulation, shall determine and establish the practices and procedures necessary for the implementation of this subsection.
 3. If retail taxes were paid on the purchase to any governmental jurisdiction in any state or city, the purchase is not subject to the use tax.
- I. Except as provided in subsection (H), the sales or use tax imposed by this Subchapter is due and payable to the Township monthly, based on monthly receipts. Each vendor shall, on or before the last day of the month next succeeding each reporting period, file with the Township a return for the preceding reporting period. The return shall be accompanied by a remittance of the amount of tax required under this Subchapter to be collected or paid for the period covered by the return.
1. The sales tax computed in the return shall in all cases be based upon the total nonexempt sales made during the period, including both cash and charge sales.
 2. The use tax computed in the return shall in all cases be based upon the total amount of sales or purchases for storage, use, or other consumption in the Township made during the period, including both by cash and by charge.
- J. Credit is allowed for prepaid taxes and for taxes paid on that portion of an account determined to be worthless and actually charged off for income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.
- K. All sales tax returns shall contain the information and be in a form prescribed by the Township by regulations.

- L. The vendor shall give the purchaser a receipt for the use tax collected. This provision may be satisfied by the vendor billing the use tax as a separate item and declaring the name and his or her use tax license number on the invoice for sale. The receipt shall be prima facie evidence that the vendor has collected the use tax and shall relieve the purchaser of the liability for reporting the use tax to the Township as a consumer.
- M. The Township, if it deems necessary to ensure compliance with this Subchapter, may require any person, subject to the tax imposed under this Subchapter, to deposit with its security as determined by the Township. The security may be sold by the Commission at public sale if it becomes necessary to do so in order to recover any tax, interest, or penalty due. Notice of such sale may be served upon the person who deposited the securities personally or by mail. If notice is by mail, notice sent to the last known address as it appears on the records of the Township is sufficient for purposes of this requirement. Upon such sale, the surplus, if any, above the amounts due under this Subchapter, shall be returned to the person who deposited the security.
- N. If any vendor, during any reporting period, collects as a tax an amount in excess of the lawful amount due, he or she shall remit to the Township the full amount of the any excess tax collected as well as the tax imposed by this Subchapter.

SECTION 8-314 Severability

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

SECTION 8-315 Effective Date

This Subchapter shall take effect on January 19, 1996. The effective dates of any subsequent amendments shall be stated in the adopting resolution.

SECTION 8-316 Repeals

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

**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.
KTCMY-21-18(March 14 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.



THE KAYENTA TOWNSHIP

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

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Resolution No: KTCMY-21-18

RESOLUTION OF THE KAYENTA TOWNSHIP COMMISSION

Approving Amendments to the Business Sales Tax Regulations to Increase the Business Sales Tax from Five Percent (5%) to Six Percent (6%) of Gross Receipts

WHEREAS:

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.


NOW THEREFORE BE IT RESOLVED THAT:

1. The Commission hereby approves the proposed amendments to Sections 8.303 and 8.311(G) of the Regulations, as set forth in the Public Notice attached hereto as Exhibit "A."
2. The Town Manager shall finalize and post or cause to be posted to the Township's website the clean version of the Regulations, as amended, attached hereto as Exhibit "B."
3. The Town Manager is hereby authorized to all such additional reasonable and necessary actions that are consistent with the intent of this Resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was considered by the Kayenta Township Commission at a duly called meeting at Kayenta, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 4 in favor, 0 opposed, and 0 abstained, this 14th day of March, 2018.

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



Rodger Grey, Chairperson
Kayenta Township Commission



The Kayenta Township Commission

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

June 7, 2018

RE: KTC BUSINESS SALES TAX INCREASE (from 5% to 6%)

Dear Taxpayer:

On May 14, 2018, by Resolution No. KTCMY-21-18, the Kayenta Township Commission ("KTC") approved amendments to the KTC Business Sales Tax Regulations to Increase the Business Sales Tax from Five Percent (5%) to Six Percent (6%) of Gross Receipts. A copy of the KTC approving resolution for the tax increase is enclosed. The increase was approved after notice to the public was provided pursuant to Section 2-107(C) of the KTC Administrative Rules and Procedures Ordinance and Section 8-307 of the KTC Business Sales Tax Ordinance. The increase was scheduled to take effect on June 1, 2018, but has been administratively delated until July 1, 2018 to coincide with a similar increase in the Navajo Nation Sales Tax on such date.

For your information, the Navajo Nation Sales Tax Regulations provide that:

For purposes of taking the credit provided in Section 610 of the Sales Tax, when a taxpayer pays Kayenta Sales Tax to the Kayenta Township . . . the gross receipts upon which that tax has been paid should not be included in the gross receipts reported to the Office of the Navajo Tax Commission on the Form 600.

NN Sales Tax Regulations § 6.122; *see also* <http://www.navajotax.org/>.

Based on the July 1, 2018 implementation date of the KTC Business Sales Tax increase, please make appropriate adjustments to your tax accounting and remit accordingly. If you have further questions regarding the KTC Business Sales Tax increase, please contact the Kayenta Township Finance Department at (928) 697-8451.

The Kayenta Township and KTC do not provide tax advice. Each Taxpayer is solely responsible for any tax assessments by the Navajo Nation, the Kayenta Township, and any other lawful taxing authority. Each Taxpayer should seek advice from an accountant and/or legal counsel, as appropriate, regarding all tax matters.

Sincerely,

Gabriel Yazzie, Town Manager



BUSINESS SALES TAX RETURN FORM

CONTINUATION

Business Name: _____

FEIN/SSN: _____

Business Address: _____

License No. _____

Reporting Period: _____
 (Month/Year)

Due no later than the 30th of each month.

Business Description	Gross Income (\$)	Deduction Type Claimed (Enter Code/Amounts)						Total Deductions (\$)	Taxable Income (\$)	Tax	TAX DUE (\$)
		Code	Dollar Amount (\$)	Code	Dollar Amount (\$)	Code	Dollar Amount (\$)				
									6%		
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TOTALS: (Transfer to Form 300 Line 6) (=) _____

KTC USE ONLY _____



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Resolution No: KTCAU-42-17

RESOLUTION OF THE KAYENTA TOWNSHIP COMMISSION

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

WHEREAS:

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

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

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

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

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

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

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

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

NOW THEREFORE BE IT RESOLVED THAT:

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

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

CERTIFICATION

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

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



Rodger Grey, Chairperson
Kayenta Township Commission

**CHAPTER 8
KAYENTA TOWNSHIP TAX ORDINANCES**

**SUBCHAPTER 4
JUNK FOOD TAX**

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

JUNK FOOD TAX ORDINANCE

SECTION 8-401 Title

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

SECTION 8-402 Authority and Administration

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

SECTION 8-403 Purposes

The purposes of this Subchapter are:

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

SECTION 8-404 Nondiscrimination

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

SECTION 8-405 Definitions

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

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

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

SECTION 8-406 Tax Imposed

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

SECTION 8-407 Rate of Tax

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

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

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

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

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

SECTION 8-409 No Exemptions

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

SECTION 8-410 Relationship to the Business Sales Tax

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

SECTION 8-411 Regulations

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

SECTION 8-412 Severability

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

SECTION 8-413 Effective Date

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

SECTION 8-414 Inconsistent Law Repealed

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

JUNK FOOD TAX REGULATIONS
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11.101. TITLE

This chapter is called the Junk Food Tax Regulations.

11.102. AUTHORITY

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

11.103. SCOPE AND APPLICATION

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

11.104. DEFINITIONS

Subject to additional definitions, if any, contained in the subsequent paragraphs of this chapter, and unless the context otherwise requires, in this chapter:

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

11.105. RATE OF TAX

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

11.106. SALE OF JUNK FOOD

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

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

Example 2: C negotiates the purchase of an order of junk food in Gallup whereby the junk food will be delivered to her office in Window Rock, Arizona, and she will make the payment for the junk food at the time and place of delivery, with ownership transferring to her at that point. The Junk Food Tax does apply to this transaction, because the transfer of ownership and transfer of risk of loss take place within the Navajo Nation.

Example 3: D is a hardware store located within the Navajo Nation. E purchases junk food at D that will be consumed at E's home in Gallup, New Mexico, outside the Navajo Nation, and E picks up the junk food at the time of purchase; the transfer of ownership occurs at the store, within the Navajo Nation. The Junk Food Tax does apply to D's gross receipts, as the transfer of ownership occurred within the Navajo Nation.

- B. 1. The location of the seller's business is irrelevant in determining the taxability of the gross receipts.

Example: XYZ lumber company from Gallup sells junk food within the Navajo Nation. The company has no retail location on the Navajo Nation, but does deliver to customers located in the Navajo Nation. The Junk Food Tax does apply to the gross receipts from

the sale of junk food so long as the transfer of ownership occurs within the Navajo Nation.

2. When the vendor has no retail location within the Navajo Nation but rather makes delivery of junk food to a buyer who is located within the Navajo Nation, the sale should be classified on the Form 1100 as H – Other, not A – Retail. Classification A on the Form 1100 is only to be used when the sale is made at a retail location operated by the vendor and physically located within the Navajo Nation.

- C. When delivery takes place within the Navajo Nation, the presumption will be that the sale occurred within the Navajo Nation, and the taxpayer challenging such presumption will have the burden of proving that the sale occurred outside the Navajo Nation.
- D. Sales for resale are exempt from the tax. However, this exemption only applies if there is a subsequent sale of the junk food. If the sale is made to the final consumer, then the sale is a retail sale and subject to the tax.

11.107. CONSIGNMENT SALES

A. In consignment sales, a consignor turns over junk food item(s) to a consignee, who is then responsible to act as the agent for the consignor in the retail sale of the junk food item(s). The transaction between the two parties is not a sale for resale, since title does not transfer. Rather, the consignor retains ownership, with the consignee merely obtaining physical possession and responsibility for making the retail sale on behalf of the consignor/owner. Ownership only transfers once, when the junk food good is sold at retail. The consignor/owner pays the consignee a fee for being responsible for making the retail sale.

B. The Junk Food Tax applies to the gross receipts received by the person making the sale. Therefore, unless an exemption applies, the tax applies to the gross receipts received by the consignor/owner, and the Sales Tax applies to the fee received by the consignee for the service of selling the junk food.

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

11.108. LOCAL TAX

The exclusion from gross receipts for reimbursement for state taxes includes any portion of state taxes that are imposed by a county or municipality.

11.109. SALES BY AND TO NON-PROFIT CORPORATIONS

A. Sales by non-profits: In order to claim the exemption provided for in Sales Tax §609(C)(3), a non-profit corporation must submit documentation to the Office of the Navajo Tax Commission of its non-profit status and obtain a certification of exemption from the Office. Based upon the documentation, the Office of the Navajo Tax Commission will determine if the non-profit status applies to the corporation's sales within the Navajo Nation or whether such sales constitute unrelated business subject to the Junk Food Tax.

B. Sales to non-profits: Because the legal incidence of the Navajo Junk Food Tax is on the seller, the identity of the buyer is irrelevant in determining whether or not the Junk Food Tax applies to a particular transaction. Therefore, unless the seller or good is independently exempt from the tax, sales to non-profits are subject to the tax.

11.110. MAIL ORDER; THIRD-PARTY COMMERCIAL CARRIER

- A. The Junk Food Tax applies to mail order transactions where the seller is located within the Navajo Nation and the transfer of ownership occurs within the Navajo Nation.
- B. The Junk Food Tax does not apply to mail order transactions where the seller is located outside the Navajo Nation.
- C. Mail order transactions include those utilizing the United States Postal Service and any third-party commercial carrier, such as, but not limited to, United Parcel Service or Fed Ex.

11.111. RELATIONSHIP WITH TOWNSHIP AND CHAPTER TAXES

For purposes of filing and reporting under this Junk Food Tax, when a taxpayer pays Junk Food Tax to the Kayenta Township or pays any governance- certified chapter pursuant to a duly-enacted chapter tax ordinance, the gross receipts upon which that tax has been paid should not be included in the gross receipts reported to the Office of the Navajo Tax Commission on the Form 1100.

Example: ABC Company has three stores: one in Kayenta, one in To’Nanees’Dizi, and one in Chinle. ABC pays the Junk Food Tax on its sales at the Kayenta location and the To’Nanees’Dizi Junk Food Tax on its sales at the To’Nanees Dizi location. When ABC is reporting and paying the Navajo Junk Food Tax on Form 1100, it should not include any gross receipts from the Kayenta store that have already been taxed by Kayenta or any gross receipts from the To’Nanees’Dizi store that have already been taxed by To’Nanees’Dizi.

11.112. PASS-THROUGH OF JUNK FOOD TAX TO BUYER

The legal incidence of the Junk Food Tax is on the seller of the junk food, and the seller is responsible for filing the tax returns and making the payment. However, there is nothing in the Junk Food Tax that prohibits the seller from passing the tax along to the buyer; the Junk Food Tax is silent on that issue. The Office of the Navajo Tax Commission neither requires nor prohibits a seller from passing the tax through to the buyer.

11.113. RELATIONSHIP BETWEEN SALES TAX AND JUNK FOOD TAX

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

B. If the Sales Tax and the Junk Food Tax both apply to a particular transaction, the Sales Tax must be paid on such transaction, and then the seller must also report and pay the Junk Food Tax for the sale of junk food items. The seller does not have the option of deciding which tax to pay.

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

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



THE
NAVAJO
NATION

RUSSELL BEGAYE
PRESIDENT

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

JONATHAN NEZ
VICE - PRESIDENT

January 12, 2018

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

RE: Navajo Nation Junk Food Tax Regulations

Dear Mr. Yazzie;

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

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

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

Sincerely,

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

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