

**Public Ruling**

**Navajo Sales Tax**

**Construction Materials**

A ruling has been requested regarding the application of the Sales Tax to the sale of construction materials.

As an initial matter, all persons making sales within the Navajo Nation will be subject to the tax, regardless of where their business is located; in other words, a lumber company from Gallup who sells lumber within the Navajo Nation will be subject to the tax. The important issue in determining the taxability of a transaction is where the sale occurs: if it occurs within the Navajo Nation, the Sales Tax applies.

The legal incidence of the tax is on the seller. Whether or not the seller collects the tax from the buyer is a matter of contract between the seller and the buyer and does not affect the seller's responsibility to pay the tax. In other words, even if the seller does not collect the tax from the buyer, the seller is responsible for filing and paying the tax to the Office of the Navajo Tax Commission.

Sales for resale are exempt from the tax. However, this exemption only applies if there is a subsequent sale of the materials. If the sale is made to the final consumer, then the sale is a retail sale and subject to the tax. For example, sales to various departments of the Navajo Nation Government and Navajo Housing Authority are retail sales, since the buyers are not retailers. They are not buying goods in order to resell them; they are buying the goods in order to use them for their own purposes. Therefore, the seller is actually a retailer, and these sales are subject to the Sales Tax.

The only situation in which the sale of construction materials might be a sale for resale, also known as a wholesale transaction, and therefore not subject to the Sales Tax, would be one in which raw materials are sold to an entity such as Navajo Housing Authority (NHA), which intends to use the materials to build a house which it will sell to an individual. In this particular situation, the seller of the construction materials is responsible for paying the tax unless the seller obtains a statement from NHA certifying that: 1) the materials are going to be used in constructing a home, 2) the sale of the home will be taxed, and 3) the tax will be paid to the Office of the Navajo Tax Commission. If the seller does obtain such a statement from NHA, and if the tax is indeed paid by that entity, then the seller may avoid paying the tax on the sale of raw

materials, as that transaction is indeed a sale for resale that is therefore exempt from the Sales Tax.

This ruling expires on December 31, 2012, unless previously withdrawn by the Office of the Navajo Tax Commission or superseded or rendered invalid by a change in statute or regulation.

If you have any questions, please contact the Office of the Navajo Tax Commission at (928) 871-7113.

Issued this 1<sup>st</sup> day of April, 2002

***Signed by R. C. Etcitty, Jr., on 04/01/02***

Raymond C. Etcitty, Jr., Executive Director  
Office of the Navajo Tax Commission