

TOBACCO PRODUCTS TAX AND LICENSING ACT

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800. **SHORT TITLE.**

This Chapter shall be called the "Tobacco Products Tax and Licensing Act."

801. **ADMINISTRATION.**

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this chapter.

802. **DEFINITIONS.**

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

- (a)"Tobacco" means commercially cultivated tobacco, the leaves of which are processed chiefly for use in cigarettes, cigars, snuff, plug or chewing tobacco, or for smoking in pipes.
- (b)"Tobacco product" means any commercially processed and/or manufactured product for human consumption which contains tobacco, including cigarettes.
- (c)"License" means a certificate issued by the Office of the Navajo Tax Commission which authorizes a distributor or retailer to engage in the sale or resale of tobacco products.
- (d)"Distributor" means any person within the Navajo Nation who manufactures, produces, ships, transports, or imports tobacco products into the Navajo Nation or in any manner acquires or possesses tobacco products for the purpose of making the first sale.
- (e)"First sale" means the first sale or distribution within the Navajo Nation or the first use or consumption of tobacco products within the Navajo Nation.
- (f)"Retailer" means any person engaged in the sale or resale of tobacco products within the Navajo Nation.
- (g)"Sale" means a transfer of possession or ownership between buyer and seller for a consideration.
- (h)"Consumer" means any person who comes into possession or ownership of a tobacco product by purchasing or otherwise acquiring it for the purpose of using, consuming, or giving away such product.
- (i) "Period" means one calendar month.

803. **TAX IMPOSED - RATES.**

There is hereby levied and imposed by this Chapter for each period, the following tax upon the first sale by any retailer or distributor of tobacco products:

- (a) on each cigarette, 2 cents;
- (b) on smoking tobacco, snuff, chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut tobacco, refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption, 4.5 cents per ounce or major fraction thereof;
- (c) on all cavendish, plug or twist tobacco, 1.1 cents per ounce or fractional part thereof;
- (d) on each twenty small cigars or fractional part thereof weighing not more than three pounds per thousand, 8.9 cents;
- (e) on cigars of all descriptions except those included in paragraph 4 of this subsection, made of tobacco or any substitute therefore, if manufactured to retail at not more than 5 cents each, 4.4 cents on each three cigars, but if manufactured to retail at more than 5 cents each, 4.4. cents on each cigar.

804. **LEGAL INCIDENCE.**

The tax imposed by this Chapter is presumed to be a direct tax on retailers and distributors of commercially processed and/or manufactured tobacco products.

805. **LIABILITY FOR REMITTANCE AND PAYMENT.**

Distributors and retailers are responsible for the collection and remittance of the tax imposed under this chapter. Distributors and retailers are liable for taxes regardless of whether the taxes are collected from the consumer.

806. **LICENSING REQUIREMENTS.**

- (a) All distributors and retailers shall obtain from the Office of the Navajo Tax Commission a license, as defined in §802(3).
- (b) The application procedures for obtaining a license and the licensing requirements shall be prescribed in regulations adopted by the Navajo Tax Commission.
- (c) The Office of the Navajo Tax Commission shall issue a license upon the condition that the applicant fully complies with the provisions of this Chapter and the regulations adopted by the Navajo Tax Commission pursuant to this Chapter.
- (d) Refusal by the Office of the Navajo Tax Commission to issue or renew a license shall be considered an adverse action under §131 of the Uniform Tax Administration Statute.

807. **LICENSING - ENFORCEMENT.**

- (a) A license may be revoked if the licensee fails to fully comply with this chapter or the Uniform Tax Administration Statute. If the licensee comes into full compliance within 15 calendar days from the date of the notice of revocation from the Office of the Navajo Tax Commission, the revocation shall be withdrawn. Revocation of a license shall be considered an adverse action.
- (b) It is unlawful for any person to sell or resell, or have available for sale, tobacco product within the Navajo Nation without a license.
- (c) Any person engaging in the unlawful action described in subsection (b) shall be subject to an initial fine of \$500, plus an additional fine of \$500 for each calendar month or part thereof during which the person operates without a license. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the person from all or part of the fine imposed under this section. Imposition of a fine shall be considered an adverse action.
- (d) (1) The Office of the Navajo Tax Commission shall issue an order to any person engaging in the unlawful action described in subsection (b) to cease and desist from such sales. Violation of this order shall subject the tobacco product to seizure by the Office of the Navajo Tax Commission or its designee. Issuance of an order or seizure of the tobacco product shall be considered an adverse action.
(2) If the person from whom the tobacco product was seized obtains a license within 10 working days of the seizure, the seized product shall be released to that person. The Office of the Navajo Tax Commission shall act in a timely fashion to grant or deny the issuance of a license. The Office of the Navajo Tax Commission may require the posting of a bond before a license is issued. The requirement of the posting of a bond shall be considered an adverse action.
(3) Following a final decision that no license will be issued, the seized tobacco product shall be sold to the highest bidder after public advertisement. Only licensed persons shall be eligible to bid. The proceeds of any sale, less the amount retained by the Office of the Navajo Tax Commission to cover any taxes due and the costs of confiscation and sale, shall be deposited into the General Fund of the Navajo Nation.

808. **USE OF FUNDS.**

Tax, interest, and penalties collected by the Office of the Navajo Tax Commission pursuant to this Chapter shall be deposited in the General Fund of the Navajo Nation.

809. **EFFECTIVE DATE.**

The tax imposed by this Chapter shall be effective as of the date of adoption by the Navajo Nation Council and in accordance with 2 N.N.C. §1005.

810. **SEVERABILITY.**

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