

RESOLUTION OF THE KAYENTA TOWNSHIP COMMISSION

**Approving Amendment One to the Kayenta Township Commission, Chapter 8 Business
Retail Sales Tax Ordinance**

WHEREAS:

1. The Kayenta Township Commission is the governing body established by the Navajo Nation Council to oversee all planning and development within the area designated as the Township site, including but not limited to development of Town Ordinances and Laws in furtherance of its responsibilities and duties; and
2. The Kayenta Township Commission is experiencing considerable economic growth and with it there is increased: governmental responsibilities; infrastructure development requirements; and capital improvements desired by the community; and
3. Economic growth has also provided opportunity to implement other forms of taxation and fees (i.e. rental, utility, and property taxes, and impact and permit fees) from various types of economic activity within the Kayenta Township; and
4. As courtesy, the Kayenta Township Office met with the Navajo Tax Commission to inform them of the proposed amendments to the Kayenta Township Commission tax ordinance and also about the proposed sales tax rate increase; and
5. The Navajo Tax Commission had no difficulty with the Kayenta Township Commission' proposed amendments and sales tax rate increase; and
6. The Kayenta Township Commission deems it necessary to amend the Kayenta Township Commission, Chapter 8, Retail Business Sales Tax Ordinance, whereby it may implement other forms of taxation for purposed of generating additional revenues to accommodate immediate and future economic growth requirements and to cover the cost of increased governmental responsibilities; and

NOW THEREFORE BE IT RESOLVED THAT:

1. The Kayenta Township Commission hereby approves Amendment One to the Kayenta Township Commission, Chapter 8, Retail Business Sales Tax Ordinance whereby it may implement other forms of taxation and fees to generate additional revenue to accommodate immediate and future economic development requirements and to cover the cost of increased governmental responsibilities.

CERTIFICATION

The foregoing resolution was duly entertained and considered by the Kayenta Township Commission at their regular scheduled meeting held in Kayenta, Navajo Nation (Arizona), at which a quorum was present and voted 4 Favor, 0 Opposed, 0 Abstained, and 0 Absent on this 18th day of August 2002.

Motion: EUGENE BADONIE

Second: HELEN BONNAHA

KAYENTA TOWNSHIP COMMISSION

By: Helan Bonnah
Vice-Chairperson

KAYENTA TOWNSHIP COMMISSION

SALES TAX ORDINANCE

Chapter 8 Business Sales Tax Ordinance

**Amendment One to the former Kayenta Business Retail Sales Tax Ordinance
Approved by the Kayenta Township Commission, by Resolution KTCAU-35-02 dated
August 18, 2002**

The Kayenta Township Commission
Chapter 8 Ordinance

CHAPTER 8. BUSINESS SALES TAX ORDINANCE

800.	SHORT TITLE
801.	PURPOSE
802.	DEFINITIONS
803.	TAX IMPOSED
804.	RATE OF TAX
805.	GENERAL EXEMPTIONS
806.	AGRICULTURAL EXEMPTIONS
807.	ECONOMIC DEVELOPMENT EXEMPTIONS
808.	EXEMPTION CONDITIONED ON COMPLIANCE WITH LAW
809.	REPORTING EXEMPT SALES
810.	EXEMPTION CERTIFICATES REQUIRED
811.	SALES AND USE TAX LICENSE
812.	LICENSE FEE
813.	COLLECTION OF TAX
814.	PREPAYMENT - PENALTY
815.	ADMINISTRATIVE REGULATIONS
816.	REIMBURSEMENT FOR TAX COLLECTION
817.	EXTENSION OF TIME
818.	RECORDKEEPING
819.	INTEREST IMPOSED
820.	PENALTIES FOR FAILURE TO FILE
821.	PENALTIES FOR FAILURE TO PAY
822.	PENALTIES FOR ATTEMPT TO EVADE OR DEFEAT TAX
823.	CHARGES FOR ADMINISTRATIVE COSTS
824.	FAILURE TO COMPLY WITH CHAPTER
825.	INTERFERENCE WITH ADMINISTRATION
826.	COLLECTION POWERS
827.	SECURITY FOR PAYMENT
828.	LIEN FOR TAXES
829.	FORECLOSURE OF LIEN
830.	APPLICATION OF PROCEEDS
831.	RELEASE OF LIEN
832.	INTERFERENCE WITH FORECLOSURE
833.	TRANSFER OF BUSINESS
834.	MUTUAL ASSISTANCE AGREEMENTS
835.	PROHIBITION OF SUITS
836.	STATUTE OF LIMITATIONS
837.	PROCEDURE FOR REFUNDS
838.	PROCEDURE FOR APPEAL FROM ASSESSMENTS AND ACTIONS

839. ABATEMENT AUTHORITY
840. CLOSING AGREEMENTS
841. CONFIDENTIALITY RULES
842. EFFECTIVE NOTICE
843. INVESTIGATIVE AUTHORITY
844. OATHS AND AFFIRMATIONS
845. RECEIPTS: DISBURSEMENTS
846. SEVERABILITY
847. EFFECTIVE DATES
848. REPEALS
849. LONG TERM RESIDENTIAL RENTALS
850. GOODS DELIVERED OUTSIDE KAYENTA
851. LABOR COST EXEMPTION
852 - 899. RESERVED

**Kayenta Township Commission
Chapter 8 Ordinance**

BUSINESS SALES TAX ORDINANCE

SECTION 800. TITLE.

This Chapter is known as the "Business Sales Tax Ordinance."

SECTION 801. PURPOSES.

The purposes of this Chapter are:

1. To enhance the general well-being of the members of the Navajo Nation residing within the Kayenta 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 expand the governmental capacity of the Kayenta Township to meet the needs of its citizens and others for municipal and other governmental services in Kayenta Township; and
5. To support capital improvements of the Kayenta Township.

SECTION 802. DEFINITIONS.

As used in this Chapter:

1. "Branch" means any person engaged in trade, commerce, manufacturing, power production, or any other productive activity, whether for profit or not, wholly or partially within the Kayenta Township.
2. "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 property by land, water, or air;
 - (c) Agricultural uses unless specifically exempted by this Chapter; and
 - (d) Real property contracting work.

3. "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.
4. "Commission" means the Kayenta Township Commission.
5. "Component part" includes:
- (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.
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.
- (a) "Construction contractor" includes 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.
 - (b) 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 contract.
7. "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 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.
8. "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 tribal enterprises or any of its political subdivisions.
 9. "Peddler" means a person who acquires or offers goods for sale within the boundaries of the Kayenta Township, but does not do business from a fixed location or site within the boundaries of the Kayenta Township.
 10. "Person" means any organization, whether it be a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, corporation, or government including Navajo Nation enterprises or entities (but not the government of the Navajo Nation itself), or any part, division, or agency of any of the foregoing, or 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 802, 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 of tangible personal property or any other taxable item or service under Section 802, 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 \$125 or more.
14. "Retailer" means:
 - (a) A person in a regularly organized retail business in tangible personal property or any other taxable item or service under Section 802(b), 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 chapter 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 them and may regard the dealers, distributors, supervisors, or employers as retailers for purposes of this Chapter.
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 802(b) for a consideration. It includes:
 - (a) Installment and credit sales;
 - (b) Any closed transaction constituting a sale;
 - (c) Any sale of gas, electrical energy, water, services or entertainment taxable under this Chapter;

- (d) Any transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; and
 - (e) Any transaction under which 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 taxable under this Chapter.
16. "Storage" means any keeping or retention of tangible personal property or any other taxable item or service under Section 802(b) within the Township for any purpose except sale in the regular course of business.
17. "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.
 - (e) "Tangible personal property" does not include:
 - (i) Real estate or any interest therein or improvements thereon;
 - (ii) Bank accounts, stocks, bonds, mortgages, notes and other evidence of debt;
 - (iii) Insurance certificates or policies;
 - (iv) Personal or governmental licenses;
 - (v) Water in pipes, conduits, ditches, or reservoirs;
 - (vi) Currency or coinage constituting legal tender of the United States or of a foreign nation.

18. "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.
19. "Township" means the Kayenta Township.
20. "Use" means:
 - (a) The exercise of any right or power over tangible personal property under Section 802(b), 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.
21. "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 802(b), or to whom such payment or consideration is payable including all roadside or flea market vendors (in which case a daily permit shall be issued at a rate determined by regulation).

SECTION 803. TAX IMPOSED.

- i. There is levied a tax on the purchaser for the amount paid or charged on the sale or gross income derived from the sale of the following:
 - (a) Retail sales of tangible personal property made within the boundaries of the Kayenta Township.
 - (b) Construction on real property within the boundaries of the Kayenta Township.
 - (c) Amount 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), facsimile or telegraph service provided to commercial consumers within the Kayenta Township.
 - (d) Gas, electricity, water, heat, coal, fuel oil, or other fuels sold or furnished for commercial consumption;
 - (e) Gas, electricity, water, heat, coal, fuel oil, or other fuels sold or furnished for residential use;
 - (f) Meals sold including all hot or cold food prepared for consumption on the premises or taken home, and meals provided by bed and breakfast establishments;

- (g) Admission to any place of amusement, entertainment, or recreation, including seats and tables reserved or otherwise, and other similar accommodations;
- (h) Services for repairs or renovations of tangible personal property or services to install tangible personal property in connection with other tangible personal property;
- (i) Cleaning or washing of tangible personal property
- (j) Laundry and dry cleaning services;
- (k) Leases and rentals of tangible personal property if the property situs is within the boundaries of the Kayenta Township, if the lessee took possession within the Kayenta Township, or if the property is stored, used, or otherwise consumed within the Kayenta Township; and
- (l) Tangible personal property stored, used, or consumed within the Kayenta Township.
- (m) The gross income derived from tours that include sites visited within the Kayenta Town limits, exempting agreements and contracts finalized prior to June 15, 1997.
- (n) If the tax is not paid by the purchaser, then the person or branch liable for the tax imposed by this section is the person receiving the gross proceeds from a sale.

SECTION 804. RATE OF TAX.

- 1. The rate of the tax levied under Section 803 shall be 5.0%.

SECTION 805. GENERAL EXEMPTIONS.

The following sales and uses are exempt from the taxes imposed by this chapter:

- 1. Sales of medicine;
- 2. Purchases of food made with food stamps under the United States Department of Agriculture WIC program.
- 3. Sales of meals served to schools, churches, or charitable institutions;
- 4. Sales to or by religious or charitable institutions in the conduct of their regular religious or charitable functions or activities;
- 5. Sales to the Nation;

6. Property brought into the Kayenta Township by a nonresident for his or her own personal use or enjoyment while within the boundaries of Kayenta Township, except property purchased for use within the Kayenta Township by a nonresident living and working in the Kayenta Township at the time of purchase;
7. Isolated or occasional sales by persons not regularly engaged in the business of selling same;
8. Sales of newspapers or newspaper subscriptions;
9. Tangible personal property, other than money, traded in as full or part payment of the purchase price;
10. Sales of motor fuels and special fuels such as:
 - (a) jet fuel;
 - (b) diesel fuel;
11. Sales or use of property which the Kayenta Township is prohibited from taxing under the laws of the Nation or the Constitution or laws of the United States.
12. Property stored within the Kayenta Township for resale.
13. Subcontracting within the Kayenta Township (as in construction contracting) provided the subcontractor has written evidence that he is working for a taxable, licensed construction contractor within the Kayenta Township.
14. Sales to the Township and its political subdivisions.

SECTION 806. AGRICULTURAL EXEMPTIONS.

The following agricultural sales and uses are exempt from the tax imposed by this Chapter:

1. Sales of tangible personal property used or consumed primarily and directly in farm or ranch operations, but not sales of:
 - (a) Machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools with a unit purchase price not in excess of \$100, and maintenance and janitorial equipment and supplies;
 - (b) Tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, in vehicle maintenance, or in transportation;

- (c) Any vehicle designed primarily for the purpose of transporting passengers, or required to be registered in Arizona, New Mexico, or Utah.
2. Seasonal sales of crops, seedling plants, garden, farm, or other agricultural produce if sold by the producer;
3. Sprays, insecticides and medicines used to control insects, diseases, and weeds for commercial or traditional subsistence production of fruits, vegetables, feeds, seeds, and animal products.
4. All sales of produce and livestock, raw or unfinished by-products of produce and livestock, made for whatever purpose, provided the producer is engaged in traditional Navajo subsistence agriculture and has a gross family income, as reportable to the United States Internal Revenue Service, of less than \$24,000 per year.
5. The Commission, by regulation, shall define "traditional Navajo subsistence agriculture," and "commercial production." For the purpose of this section, all sales of animals for slaughter shall be deemed sales for resale.

SECTION 807. ECONOMIC DEVELOPMENT EXEMPTIONS.

The following sales and uses are deemed critical to the economic development of the Township and are therefore exempt from the tax imposed by this Chapter:

1. Sales or leases of machinery and equipment purchased or leased by a manufacturer for use in new or expanding operations (excluding normal operating replacements, which includes replacement machinery and equipment which increases plant production or capacity. The Commission shall by regulation define "new or expanding operations" and "manufacturing facility."
2. Sales or leases of materials, machinery, equipment, and services of any person in excess of \$50,000 for any tax year used in the new construction, expansion, or modernization (excluding normal operating replacements, as determined by the Commission) of any mine, mill, reduction works, smelter, refinery, synthetic fuel processing and upgrading plant, rolling mill, coal washing plant, coal loading facility, railroad facility, railroad line, pipeline, electric generating station, electric transmission line, or electric transmission facility. The Commission shall define all terms in this subsection by regulation.
3. Sales or leases of materials, machinery, equipment, and services used in the construction of or incorporated in pollution control facilities required to be installed by any commercial enterprises located within the Kayenta Township by the laws of the Navajo Nation or the laws of the United States.

4. Sales or leases of materials, machinery, equipment and services used in the construction of any qualifying new small business located within the Kayenta Township.
 - (a) "Small business" means any business producing or anticipating production of gross receipts of less than \$50,000 per year in the first year of operation.
 - (b) "Qualifying" means that the new small business has registered with the Navajo Tax Commission and the Kayenta Township Commission and has acquired appropriate licensing prior to starting business.
5. Property purchased for resale in the Kayenta Township, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product.
6. Any container, label, or shipping case, or, in the case of meat or meat products, any casing.

SECTION 808. AVAILABILITY OF EXEMPTION CONDITIONED ON COMPLIANCE WITH LAW

The availability of any of the exemptions specified in Section 807 of this Chapter is strictly conditioned on compliance with this chapter, other Township laws and regulations, and any other applicable Navajo Law.

1. The Office of Navajo Labor Relations, the Division of Natural Resources, the Division of Health and the Division of Economic Development are hereby authorized to notify the Commission that a business or branch is or is not 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.
2. In the event that a business is deemed non-complying by any of the offices or divisions specified in this Subsection (a) above, the Commission shall not allow any of the exemptions specified in Section 807 6 to the non-complying business or branch.
3. In the event a business is deemed non-complying pursuant to this section, that business shall be entitled to appeal the issue of non-compliance through the regular appeal procedures specified in this Chapter. No other method of appeal shall be allowed. A determination of non-compliance made by any of the offices or divisions specified in Subsection (a) above is presumed correct, and the burden of proving compliance shall remain on the taxpayer.

SECTION 809. EXEMPT SALES TO BE REPORTED.

The sales or uses exempt under Section 805(1), (2), (3), (4), (5), (6), (9), (10) and (11), the sales and uses exempt under Section 806 (1), (3), and all sales and uses exempt under Section 807 shall be reported to the Commission by the seller, vendor, or purchaser, as the case may be. The Commission shall disallow any exemption included in this section upon failure by the seller, vendor, or purchaser to report the full amount of such exempt sales.

SECTION 810. EXEMPTION CERTIFICATES REQUIRED.

1. For the purpose of the proper administration of this Chapter 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 Chapter and sold by any person for delivery within the Kayenta Township is sold for storage, use, or other consumption in the Kayenta Township unless the person selling such property, item or service has taken 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 Chapter.
2. 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 811. SALES AND USE TAX LICENSE.

1. It is unlawful for any person required by this Chapter to collect sales or use tax, to engage in business within Kayenta Township without first having obtained a license to do so. This license shall be granted and issued by the Commission. 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 Commission 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 Chapter. Any person required by this Chapter to collect sales or use tax within Kayenta 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 Chapter.
2. Each person filing contract bids with the Kayenta Township or any of its political subdivisions for sale of tangible personal property or any other taxable item or service under this Chapter shall include with the bid the sales tax license number issued to that person under Subsection (1).

SECTION 812. LICENSE FEE.

All persons doing business in the Township whose gross income did not exceed \$125,000 for the past tax year shall pay a license fee of \$25 per annum. All persons doing business in the Kayenta Township whose gross receipts from sales and uses taxable under this Chapter exceeded \$125,000 but were less than \$500,000 for the past tax year shall pay a license fee of \$50 per annum. All persons doing business in the Kayenta Township whose gross receipts from sales and uses taxable under this Chapter exceeded \$500,000 for the past tax year shall pay a license fee of \$100 per annum.

SECTION 813. COLLECTION OF TAX.

1. (a) Each vendor is responsible for the collection of the sales or use tax imposed under this Chapter.

(b) 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.
2. Each person storing, using or consuming tangible personal property under Section 803 is liable for the use tax imposed under this Chapter.
3. If any sale of tangible personal property or any other taxable item or service under Section 803 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.
4. (a) Each vendor shall pay or collect and remit the sales and use taxes imposed by this chapter if within the Kayenta Township they directly or by any agent or other representatives;
 - (i) Has or utilizes an office, distribution house, sales house, warehouse, service enterprise, vending machines, home sales location, billboards, or other place of business;
 - (ii) Maintains a stock of goods;
 - (iii) 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;
 - (iv) Regularly engages in the delivery of property in the Township other than by common carrier or United States mail; or

- (v) Regularly engages in any activity in connection with the leasing or servicing of property located within the Township.
 - (b) If none of the conditions listed under subsection (4)(a) exist, the vendor is not responsible for the collection of the use tax, but each person storing, using, or consuming tangible personal property purchased outside the Kayenta Township and brought within the Kayenta Township is responsible for remitting the use tax.
 - (c) For purposes of collecting and enforcing the tax imposed by this Chapter, a vendor will be deemed to have submitted to the civil jurisdiction of the Navajo Nation and the Kayenta Township if the vendor has done any of the acts listed in subsection (4)(a) 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.
5. 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 Chapter.
 6. 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 Commission upon every sale of a motor vehicle subject to registration under the laws of the Nation or any state.
 - (a) No resident purchasing a motor vehicle within or without the Kayenta Township and subject to the civil jurisdiction of the Navajo Nation and the Kayenta Township shall operate that motor vehicle within the Kayenta Township without first paying the tax due on the sale.
 - (b) The Commission, by regulation, shall determine and establish the practices and procedures necessary for the implementation of this subsection.
 - (c) If retail tribal, state, or city taxes were paid on the purchase to any governmental jurisdiction in any state or city, the purchase is not subject to use tax.
 7. Except as provided in subsection (f) and in Section 814, the sales or use tax imposed by this Chapter is due and payable to the Commission 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 Commission a return for the preceding reporting period. The return shall be accompanied by a remittance of the amount of tax required under this Chapter to be collected or paid for the period covered by the return.
 8. (a) 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.

- (b) 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.
9. 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.
10. (a) All returns shall contain the information and be in a form prescribed by the Commission by rule.
- (b) The Commission may by rule extend the time for making returns and paying the taxes, but no extension may be for more than 90 days.
- (c) The Commission, if it deems it necessary in order to ensure the payment of the tax imposed by this Chapter, may require returns and payment of the tax to be made for other than monthly periods.
11. If the accounting methods regularly employed by the vendor, and if the transaction of his business are such that reports of sales made during a calendar month period will impose unnecessary hardships, the Commission may accept reports at intervals that will, in its opinion, better suit the convenience of the taxpayer or vendor, and will not jeopardize collection of the tax.
12. 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 Kayenta Township as a consumer.
13. The Commission, if it deems it necessary to ensure compliance with this Chapter, may require any person, subject to the tax imposed under this Chapter, to deposit with it security as determined by the Commission. 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 Commission is sufficient for purposes of this requirement. Upon such sale, the surplus, if any, above the amounts due under this Chapter, shall be returned to the person who deposited the security.
14. 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 Commission the full amount of the tax imposed by this Chapter and also any excess.

15. For purposes of civil or criminal action brought under this Chapter, each monthly tax period in which a vendor collects a tax, and with intent to evade any tax, fails to timely remit the full amount of the tax required to be remitted, constitutes a separate offense.
16. A credit may be claimed for 3% of the 5% tax paid to the Kayenta Township against the tax assessed by the Navajo Nation after April 1, 2002, if the tax has been timely paid to the Kayenta Township. If the tax has not been paid to the Township, the business or branch shall remit the full 5% tax to the Township. Employees of the Kayenta Township are employees of the Nation for determination of confidentiality purposes and may share taxpayer's payment information.

SECTION 814. PREPAYMENT - PENALTY.

1. Any person whose tax liability under this chapter was:
 - (a) \$96,000 for the previous year
 - (b) \$24,000 for the previous quarter, or
 - (c) Whose estimated tax liability is \$8,000 or more per month, as determined by the Commission, shall pay not less than 90% of the amount of sales and use tax liability for April and May of each year. The Commission shall establish by rule the procedures and guideline for determining the tax liability under this section.
2. The prepayment shall be accompanied by a return showing the amount of the prepayment in the form and manner determined by the Commission. The prepayments shall be made to the Commission on or before June 15 of each year.
3. The amount of the prepayment shall be a credit against the amount of the taxes due and payable for the quarterly period in which the payment became due. In addition to any other penalties for late payment there shall be a penalty of 10% of the total amount of the prepayment due.

SECTION 815. ADMINISTRATIVE REGULATIONS.

The Kayenta Township Commission is empowered to administer this tax and to that end, shall be empowered to adopt rules and regulations, both substantive and procedural, orders implementing its decisions, rulings, and instructions such as may be necessary to the proper and efficient administration of this Chapter.

SECTION 816. REIMBURSEMENT FOR TAX COLLECTION.

The branch required to file a return under this Chapter may deduct and withhold from the taxes otherwise due to the Township on the monthly return, as reimbursement for the cost of collecting the tax, one percent of the amount of the tax due as shown on the return. If taxes due under this

Chapter are not paid to the Township within the time required or if the branch required to file a return fails to file the return when due, the branch forfeits the claim to reimbursement that could have been taken if the tax had been paid or the return filed when due.

SECTION 817. EXTENSION OF TIME.

- (a) A branch may request an extension of time for filing a return. The request must be made to the Town Manager in writing on or before the due date for the return. An extension may be granted at the discretion of the Town Manager.
- (b) The extension of time for filing will also constitute an extension of time for payment, unless expressly denied by the Town Manager. The Town Manager may in his or her discretion condition such extension on the payment of an estimated tax or the posting of a bond or provision of other security.
- (c) The business or branch may appeal a decision by the Town Manger to the Commission. The decision of the Commission is final.

SECTION 818. RECORDKEEPING.

- (a) Every branch shall keep full and true records of ~~room~~ receipts and taxes collected for each period, in accordance with regulations and shall make these records available at the request of the Commission.
- (b) In the case of a branch 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 (6) years beyond the end of the period to which the records relate.

SECTION 819. INTEREST IMPOSED.

Annual rates of interest shall be established in regulations. 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. Interest at a lesser rate shall be paid on any overpayment of tax from the date the payment was made to the date the overpayment is refunded.

SECTION 820. PENALTIES FOR FAILURE TO FILE.

- (a) If a branch fails to file a return by the time due, a penalty of 10% of the tax due for the period shall be assessed against the branch.,
- (b) An additional penalty of one percent (1%) of the tax due for the period shall be assessed for each full month the return is overdue. Provided, that the additional

penalty shall not, except as to the minimum amounts, exceed twenty-four percent (24%) of the tax.

- (c) A return filed on or before an extended date for filing is timely filed.
- (d) For good cause shown, the Town Manager may in his or her discretion relieve the branch from all or part of the penalties imposed under this section.

SECTION 821. PENALTIES FOR FAILURE TO PAY.

- (a) A branch failing to pay an amount of tax by the time due shall be assessed a penalty of five percent (5%) of the amount of the underpayment.
- (b) An additional penalty shall be assessed of one-half percent (0.5%) of the underpayment for each full month payment is overdue, but not to exceed thirty-six percent (36%) of the underpayment.
- (c) An amount paid on or before an extended date for payment is timely paid.
- (d) For good cause shown, the Town Manager may in his or her discretion relieve the branch from all or part of the penalties imposed under this section.

SECTION 822. PENALTIES FOR ATTEMPT TO EVADE OR DEFEAT TAX.

- (a) Any branch understating the tax imposed by this Chapter through negligence or intentional disregard of the rules and regulations (but without the intent to defraud) shall be assessed a penalty of \$250, plus twenty-five percent (25%) of the underpayment of tax.
- (b) If any part of an understatement of tax is shown to be due to fraud, a branch shall be assessed a penalty of fifty percent (50%) of the underpayment of tax.
- (c) Any person who assists a branch in the fraudulent understatement of the tax due under this Chapter shall be subject to a penalty of \$500, plus twenty-five percent (25%) of the underpayment of tax. Any liability arising under this subsection shall be assessed and collected as a tax imposed by this Chapter.

SECTION 823. CHARGES FOR ADMINISTRATIVE COSTS.

A branch failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including attorney fees and other costs of collection outside the jurisdiction of the Kayenta Township Commission. These charges shall be assessed unless the Commission for good cause shown relieves the branch from the operation of this section.

SECTION 824. FAILURE TO COMPLY WITH CHAPTER.

Any branch or other person obligated to pay taxes pursuant to this Chapter, to designate an individual, to file a return, to provide information or documents or allow access to equipment within its possession or control, to furnish a surety bond or other security, or to comply with a lawful order of the Commission, and failing to do the same in accordance with the provisions of this Chapter and the regulations, may have its rights to engage in taxable sales within all or some of the Kayenta Township suspended, until compliance is made or for such shorter time as the Commission may provide. The Commission is empowered to order such suspension, provided that it shall first give the person to be suspended notice and an opportunity to be heard under Section 838, and that any suspension may be appealed pursuant to Section 842.

SECTION 825. 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 Navajo Nation in accordance with the procedures set forth in 17 N.N.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 Kayenta Township temporarily or permanently suspended. The Commission is empowered to order such suspension, provided that it shall first give the branch to be suspended notice of eviction or non-compliance with this chapter and an opportunity to be heard under Section 838(a), and that any suspension may be appealed pursuant to Section 838(b).

SECTION 826. COLLECTION POWERS.

- (a) The Commission shall have full power to collect any taxes assessed; including the power to attach and seize, in accordance with the provisions of this Chapter, the assets of a branch or any property subject to lien, and any other powers available to the Kayenta Township for collection of debts owed it.
- (b) The Commission may through its own counsel and/or request the Attorney General of the Navajo Nation to bring suit or enforcement proceedings in any court of competent jurisdiction. Provided, that the bringing of the suit or enforcement proceedings shall not constitute a waiver of sovereign immunity and further provided that the Commission shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

SECTION 827. SECURITY FOR PAYMENT.

Whenever necessary to secure the payment of any taxes due or reasonably expected to become due, the Commission is authorized to require the branch to furnish an acceptable surety bond in an appropriate amount, payable to the Commission and conditioned upon the payment of the taxes therein identified no later than the date on which the liability becomes conclusive, or to furnish other acceptable security in an appropriate amount, and to require the branch to furnish additional security as it becomes necessary.

SECTION 828. LIEN FOR TAXES.

- (a) If a branch fails to pay any taxes after demand by the Commission, the amount shall be a lien in favor of the Kayenta Township upon all property or rights to property of those liable for collecting the taxes due under this Chapter.
- (b) The lien shall arise at the time the demand 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 other parties until notice is recorded in the offices of the Commission in a form available for inspection by the public.
- (c) The lien shall not be effective as against other parties until notice is recorded in the offices of the Commission in a form available for inspection by the public.
- (d) Provided, that with respect to a return filed, a lien shall arise for any unpaid taxes at the time of filing without further demand, and further provided that, 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.

SECTION 829. FORECLOSURE OF LIEN.

- (a) The Commission may foreclose upon any or all items of property or rights to property subject to a lien for taxes by levying upon the same and, where such property does not consist of money, converting the same into money by any appropriate means including the sale thereof or the operation under receivership of the business in which the property is used. Provided, that the Commission may by regulation prescribe the circumstances in which property or rights to property or rights to property subject to a lien may be retained to offset the amount due, rather than being converted into money.
- (b) The Commission by regulation may provide for the redemption of property levied upon, within time limits and on terms specified.
- (c) The effect of a levy upon any branch for obligations due or payable by a branch liable to collect the tax due under this Chapter shall be continuous from the date the levy is first made until the liability out of which the levy arose is satisfied.
- (d) Any person in possession of or obligated with respect to property or rights to property upon which a levy has been made who, upon demand by the Commission, surrenders such property or rights to property (or discharges said obligation) to the Commission, shall be discharged from any obligation or liability to the person or persons liable for collecting the tax due under this Chapter whose property or rights to property were levied upon.
- (e) The Commission shall carry out the provisions of this section under regulations comporting with due process, and no court proceeding shall be required in order for it to do so.
- (f) Proceedings for the sale of property substantially in compliance with the regulations shall be effective to transfer to the purchaser all right, title, and interest therein of the branch or person whose property or rights to property were levied upon. Provided, that where required by Federal law the sale of property shall not be final without the approval of the Secretary of the Interior.
- (g) The Commission 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 Commission.

SECTION 830. APPLICATION OF PROCEEDS

- (a) Money levied upon by the Commission, or realized from property or rights to property levied upon, shall be applied first to the expense of the levy and proceedings for the conversion of property, and then to the liability for costs, penalties, interest, and tax, in that order.

- (c) The balance, if any, shall be remitted to the person or persons who have claimed and proven legal entitlement thereon, provided that the Commission may set time limits or other reasonable conditions on the making and proving of such claims.

SECTION 831. RELEASE OF LIEN.

- (a) Payment of the entire liability of the branch on account of whose liability the lien arose shall operate to release the lien.
- (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 Commission thereafter receives all or part of the taxes giving rise to the lien, the Commission will immediately cause a notation of the complete or partial release of the lien to be made in the record.
- (d) The Commission may in its discretion release liens on certain property without payment of all outstanding liabilities, for good cause and where interests of the Kayenta Township are adequately protected by other security.

SECTION 832. INTERFERENCE WITH FORECLOSURE.

- (a) There is hereby created within the Kayenta Township government, a Township Recording Officer who will record all liens and levies and maintain records of all actions taken, regarding liens and levies until the liens and levies are satisfied through payment, release by the vote of the Commission, released by the Navajo Supreme Court, or at least 10 years if not refiled.
- (b) It shall be unlawful for any person to remove from the jurisdiction of the Navajo Nation or Kayenta Township any property on which there is a lien for taxes which is effective against that person pursuant to Section 827.
- (c) It shall be unlawful for any person in possession of or obligated with respect to property or rights to property which have been levied upon, to fail to surrender such property or rights or to discharge such obligation upon demand by the Commission therefore, 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.
- (d) 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 levy was made. Any liability arising under this section shall be assessed and collected as a tax imposed by this Chapter.

SECTION 833. TRANSFER OF BUSINESS.

- (a) If a person buys substantially all of the assets of a branch within the Kayenta Township, that person shall withhold from the purchase price and pay to the Commission the amount of taxes due on account of activities of the branch prior to the purchase.
- (b) Any buyer failing to withhold taxes 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 a tax imposed by this Chapter.
- (c) The buyer shall make a written request and, within 30 days after the owner's records are made available for audit, the Commission 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.
- (d) No consent to the assignment or transfer of any lease or other rights to engage in productive activity within the Navajo Nation unless the Commission first certifies that taxes arising from said activity have been paid, or that payment has been adequately secured.

SECTION 834. MUTUAL ASSISTANCE AGREEMENTS.

The Commission 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 appropriate authority of the other taxing jurisdiction.

SECTION 835. PROHIBITION OF SUITS.

No suits for the purpose of restraining the assessment or collection of the taxes imposed under this Chapter shall be maintained in any court by any person, whether or not such person is the person against whom such taxes were assessed.

SECTION 836. STATUTE OF LIMITATIONS.

- (a) Taxes imposed and required to be collected by this Chapter shall be assessed within six (6) years after the return was filed, except as provided in subsections (b) and (d) of this section.
- (b) In the case of a fraudulent return with the intent to evade tax, no period of limitations shall apply.

- (c) Any action in a court or by levy for collection of taxes imposed under this Chapter must be commenced within six (6) years of the assessment, except as provided in subsections (d) and (e) of this section.
- (d) The running of the period of limitations provided in subsections (a) and (c) of this section is suspended during any period the Commission is prohibited by any court from making an assessment or commencing collection proceedings and during any period of appeal under Section 838.
- (e) The running of the period of limitations for collection may be suspended for any period agreed upon between the person and the Commission.

SECTION 837. PROCEDURE FOR REFUNDS.

- (a) Any branch believing it has made an overpayment of taxes, within one (1) year after the time the alleged overpayment was made, may file a written claim for refund with the Commission. Provided, that it shall not be necessary to file a claim if the basis therefore has already been established under abatement or asserted in an appeal under Section 838~~7~~, and further provided that an issue determined pursuant to an appeal may not be reopened by the filing of a claim for refund.
- (b) If an overpayment arises as a result of an action of a Tribal, Federal, or state agency, the Township, or any court other than in an appeal under subsection 838~~7(b)~~, wherein the action changes the factual basis upon which taxes were determined and paid, the time for filing a claim for refund shall be one (1) year from the date of such action.
- (c) The Commission shall rule on claims for refund according to procedures established in regulations. If a claim is denied in whole or in part, the branch may appeal pursuant to Section 838~~7~~.
- (d) If the Commission determines, either on a claim for refund under this section, or in an appeal under subsection 838~~7~~ on a claim or from an assessment, from which action no appeal is taken, that a branch has made an overpayment, the Commission shall refund the overpayment, with applicable interest, to the branch.
- (e) Where the action of the Commission on a claim for refund under this section, or in the appeal under subsection 838~~7~~ on a claim or from an assessment, is then appealed, the Commission shall make a refund of the overpayment determined by the order in that appeal, plus the applicable interest.
- (f) Provided, that if the branch entitled to a refund owes unpaid taxes, the refund shall be offset and reduced by such unpaid amounts.

- (g) Where an overpayment occurred through mathematical error, or other mistake or verifiable change of fact and within the times allowed under subsections (a) and (b) of this section, the Commission by form or regulation may provide for a credit by offset in a current period.
- (h) No refunds or credits for taxes paid shall be made or allowed to any branch by any court or agency other than as provided in this section, except that the Commission may by form or regulation provide for a refund or credit where taxes paid for one period thereafter requires adjustment on account of another tax for a concurrent period which is later determined and paid.

SECTION 838. PROCEDURE FOR APPEAL FROM ASSESSMENTS AND ACTIONS.

1. General Provisions:

- (a) In all administrative and judicial proceedings governed by this chapter, the orders, assessments, factual findings, and legal conclusions of the Kayenta Township Commission or its officers are presumed correct unless the taxpayer demonstrates otherwise.
- (b) In all factual hearings, the taxpayer has the burden of proving by a preponderance of the evidence the existence of an asserted fact, except where another standard is provided by statute.
- (c) Appeals from assessments and denials of refund shall be made first to the Commission according to procedures established herein and in regulations.
- (d) The failure duly 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).

2. Conference.

- (a) 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 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. The conferee and taxpayer may agree to confer more than once.
- (b) The request for a conference must identify the disputed 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.

- i. The taxpayer may request a stay of payment of taxes during the period that it seeks review of a notice under this section.
 - ii. Such a request for stay must be made in writing prior to the time payment is due.
 - iii. The conferee may grant a stay of payment of taxes for good cause shown.
 - iv. 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.
 - v. 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.
- (c) If the conferee and the taxpayer resolve any disputed 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.
- (d) 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.
3. Administrative Hearing Officer.
- (a) The Kayenta Township Commission shall establish the position of Administrative Hearing Officer and shall hire an attorney who will conduct hearings for the Township in this phase of the hearing process. The Administrative Hearing Officer ("Hearing Officer") shall work for the Township serving at times required for hearings and shall be paid for his/her services.
 - (b) Appeal to the Hearing Officer commences upon the timely filing of the appeal.
 - i. The taxpayer's request for relief was denied under subsection (b) of this section.
 - ii. 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).

- iii. The taxpayer must file a request for a hearing before the Hearing Officer within thirty (30) days of the issuance of a conference decision.
 - iv. A request for a hearing before the Hearing Officer must be in writing and contain a 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.
 - v. 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.
- (c) The Hearing Officer has the authority to enter prehearing orders. When necessary, the Hearing Officer may confer with the parties before entering a prehearing 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. Prehearing orders will control the course of the hearing.
- (d) 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.
- i. Action to quash. Any witness subject to a subpoena may petition the Hearing Officer to vacate or modify the subpoena served 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.
 - ii. Non-compliance. Failure to comply with a subpoena issued by the Commission shall subject the noncomplying witness or party to sanctions.
- (e) Conduct of Hearing. The Hearing Officer shall preside over the hearing and shall conduct them according to the following provisions.
- i. 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 Commission, and proof of service must be filed on record.
 - ii. Evidence, witnesses, and record.

- A. Sworn testimony. Oral evidence shall be taken only on oath or affirmation.
- B. 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, may call the taxpayer as a witness, or may call as a witness any person who is present at the hearing.
- C. Privilege. Any privilege that applies in civil actions before Navajo courts shall be followed.
- D. Admissibility. Any relevant evidence, including affidavits and other forms of hearsay, shall be admitted if such evidence is of the sort upon which responsible persons are accustomed to relying 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.
- E. 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.
 - iii. 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.
 - iv. Continuances. Reasonable continuance may be granted for good cause.
 - v. 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.
- (f) Final order:
 - i. The hearing conducted under this part concludes when the Hearing Officer enters findings of fact, conclusions of law, and a final order.

- ii. 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.
- iii. The final order issued by the Hearing Officer shall constitute the final action of the Commission.

4. Appeal to the Supreme Court.

- (a) Appeals from final actions of the Commission, including but not necessarily limited to assessments, denials of refund, and suspension orders, shall be made only to the Supreme Court of the Navajo Nation.
- (b) A party receiving an adverse decision from the Hearing Officer in a proceeding conducted under subsection (c) of this section may appeal the order to the Supreme Court of the Navajo Nation, subject to the following conditions:
 - i. The appealing party must file a notice of appeal with the Supreme Court within thirty (30) days after the Hearing Officer enters the order under subsection (c).
 - ii. The taxpayer shall not be entitled to an appeal under this section unless the taxpayer pays the contested taxes in accordance with the order of the Hearing Officer.
 - iii. The rules of Appellate Procedure of the Navajo Supreme Court shall govern the conduct of appeals from orders of the Hearing Officer.
- (c) In no case may an appeal of an assessment be taken to the Supreme Court until payment of the taxes assessed has first been made. Review of Commission actions in the Supreme Court shall be on the records made in the Commission and not de novo, and shall be limited to the determination whether the action of the Commission was not supported by the evidence, or was arbitrary, capricious, an abuse of discretion, beyond its authority, or otherwise contrary to applicable Tribal or Federal law, except that where affirmation of the action would suspend a right of an appellant to engage in productive activity within the Kayenta Township, the Supreme Court shall be empowered to affirm, reverse, or modify a Commission action, or to remand the matter to the Commission for further action, and it may stay the effect of an order suspending a right to engage in productive activity, pending the appeal.

SECTION 839. ABATEMENT AUTHORITY.

Upon notice of assessment, or notice of denial of a claim for refund, or notice of other adverse action by the Kayenta Township Commission, the taxpayer may request a conference with the Kayenta Township Commission to consider the basis for abatement, to seek re-determination of

an assessment or review of a denial or a claim for refund or any other adverse action, or to clarify issues that may form the basis of an appeal under this chapter.

- (a) In response to a written request for abatement, but before any court acquires jurisdiction in the matter, or when an assessment is found to be incorrect, the Commission 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 Commission shall cause the abatement of the appropriate amount of the assessment.
- (c) Abatements in excess of \$1,000 shall be recorded in the offices of the Commission in a form available for public inspection. The record shall be maintained for a minimum of six (6) years after the date of abatement.

SECTION 840. CLOSING AGREEMENTS.

- (a) If at any time after a final assessment of taxes, the Commission in good faith is in doubt of the liability of the person for the payment thereof, it may compromise the liability by entering in writing with the person a closing agreement that adequately protects the interests of the Kayenta Township, provided that such agreement shall be subject to approval by the legal counsel of the Kayenta Township.
- (b) If entered into after any court acquires jurisdiction of the matter, 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 Commission 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 non-liability for payment of taxes relating to the periods referred to in the agreement, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

SECTION 841. CONFIDENTIALITY RULES.

- (a) It shall be unlawful for any employee or former employee of the Commission to reveal to any individual, other than another employee or legal counsel of the Commission, any information contained in the return of any branch or any other information about any person acquired as a result of his or her employment by the Commission, except:
 - (i) To an authorized representative of the branch;

- (ii) To an employee of the government of the Navajo Nation ~~Tribe~~ or a member of the Navajo Nation ~~Tribal~~ Council authorized by the Commission to obtain information for use in connection with the governmental function of said employee or council member, provided that it shall be unlawful for the employee or council member to reveal said information except as permitted in this section;
 - (iii) To an authorized representative of another Indian tribe or a state, provided that the receiving tribe or state has entered into a written agreement with the Commission to use the information for tax purposes only and that the receiving tribe or state has enacted a confidentiality statute similar to this section;
 - (iv) To an authorized representative of a Federal agency, pursuant to the terms of a reciprocal agreement for the exchange of such information;
 - (v) In any administrative or judicial proceeding to enforce any act or collect taxes, or in any matter in which the branch has put its own liability for taxes or the amount thereof at issue;
 - (vi) In compliance with the order of any court of competent jurisdiction in which the information sought is material to the inquiry;
 - (vii) In recording tax liens on the property of a branch or collecting taxes by levy upon the property or rights to property of a branch;
 - (viii) In statistical releases not identifying the information provided as applicable to any single person;
 - (ix) To the extent of revealing whether a branch 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
 - (x) To the extent of revealing to the purchaser or intended purchaser of a branch or the property thereof the amount and basis of any unpaid taxes for which the seller is liable.
- (b) For purposes of this section, "employee of the Commission" shall include any person for whose services the Commission has contracted, provided that such person shall agree in the contract for services to abide by the provisions of this section.

- (c) Any employee, chapter officer, or council member who violates any of the provisions of this section shall be subject to a fine of \$50, or suspension for 30 days, or both.
- (d) The Commission may further restrict the disclosure of information and provide for compliance with the provisions of this section.

SECTION 842. EFFECTIVE NOTICE.

- (a) Notice required to be given by the Commission may be effectively given to a person by mailing the notice to the individual last designated by the person, at the address shown on the designation. Where a branch has not designated an individual, notice may be effectively given by mailing the notice to a person who is lessee, permittee, or assignee of property on which the productive activity at issue is conducted, or to a person holding a permit or license for the conduct of said activity. The foregoing is not intended to exclude the use of other methods of providing notice, including publication, so long as comporting with due process.
- (b) Public notice of a lien shall be effective as to all property and rights to property of a branch, business, or person so long as the description of the branch, business, or person is sufficient to put a reasonable person on inquiry to ascertain the existence of a lien on the property of said branch, business, or person.

SECTION 843. INVESTIGATIVE AUTHORITY.

- (a) For the purpose of enforcing the provisions of this chapter, the Commission is authorized to inspect property, to examine and require the production of any pertinent records, books, information, or evidence, 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 proceedings.
- (b) As a means for accomplishing the foregoing, the Commission is hereby vested with the power to issue subpoenas and summonses pursuant to regulations comporting with due process.

SECTION 844. OATHS AND AFFIRMATIONS.

Any agent or employee designated by the Commission for that purpose is authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under this Chapter or the regulations.

SECTION 845. RECEIPTS; DISBURSEMENTS.

- (a) There is hereby created the Kayenta Township General Fund.

- (b) All money received by the Commission as taxes shall be deposited forthwith to the credit of said Fund.
- (c) Payment of claims for refund shall be dispersed 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 utilized for township technical staff and categorical projects as defined in the Kayenta Tribal Business Sales Tax Project.
- (e) Notwithstanding the foregoing, the Commission may in its discretion hold certain contested amounts in escrow, or direct some balance to be maintained in the Tax Administration Suspense Fund from month-to-month in anticipation of additional payments which may have to be made there from.

SECTION 846. 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 the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

SECTION 847. EFFECTIVE DATES.

This Chapter shall take effect upon approval by the Kayenta Township Commission. The tax imposed by this Chapter shall be due and payable for calendar months beginning September 1, 2002.

SECTION 848. REPEALS.

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

SECTION 849. LONG TERM RESIDENTIAL RENTALS.

Exemption shall be made for sales tax on the rent of long term domestic residences wherein individuals intend to use such premises as a long term personal residence. Such leases as are approved by the Commission for the long term residency of an individual or family based on an application to the Commission for use of trust lands within the boundaries of the Kayenta Township are exempt from sales tax.

SECTION 850. 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 Kayenta Township. There shall be no sales tax on goods and services that are sold and delivered outside of the Township boundary. Such goods and services include, but or not limited to:

1. Propane, concrete, and construction materials transported to an address outside the boundaries of the Kayenta Township;
2. Retail installations of tangible personal property (not attached to real property) at an address outside the boundaries of the Kayenta Township;
3. Delivery or freight charges to a destination outside the boundaries of the Kayenta Township;
4. Shipping of tangible personal property to a point outside the boundaries of the Kayenta Township;
5. Sales of tangible personal property when the purchaser does not take possession of the tangible personal property in the Kayenta Township, but rather has the property shipped to an address outside the boundaries of the Kayenta Township.
6. If the purchaser takes possession of the tangible personal property within the boundaries of the Kayenta Township, the sale is not considered an out of town sale, and therefore not exempt from retail sales tax.
7. The business or branch shall maintain a record of the out of 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 Kayenta Township, postal receipts, or common carrier charges.

SECTION 851. LABOR COST EXEMPTION.

Labor costs are exempted from sales tax retroactive to June 15, 1997. Labor costs relate to retail installation, service industries, and delivery charges. Labor as defined within the meaning of a contracting business is taxable as part of the construction contracting.

SECTIONS 852 – 899. RESERVED.