

The person or vendor 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 (1.0%) 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 person or vendor required to file a return fails to file the return when due, the person or vendor forfeits the claim to reimbursement that could have been taken if the tax had been paid or the return filed when due.

#### **SECTION 818. EXTENSION OF TIME**

1. A person or vendor may request an extension of time for filing a return. The request must be made to the Financial Department in writing on or before the due date for the return. An extension may be granted at the discretion of the Financial Department.
2. The extension of time for filing will also constitute an extension of time for payment, unless expressly denied by the Financial Department. The Financial Department may in its discretion condition such extension on the payment of an estimated tax or the posting of a bond or provision of other security.
3. The person or vendor may appeal a decision by the Financial Department to the Town Manager. The decision of the Town Manager is final.

#### **SECTION 819. RECORDKEEPING**

1. 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.
2. 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.
3. 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.
4. 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 3 above.
5. 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.
6. 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 815,

821, 822, or 823, 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.

7. 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.
8. 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 820. INTEREST IMPOSED**

Annual rates of interest as established in Navajo Nation regulations shall be utilized for purposes of this Chapter. Simple 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 821. PENALTIES FOR FAILURE TO FILE**

1. If a person or vendor 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 person or vendor.
2. 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 (24%) of the tax.
3. A return filed on or before an extended date for filing is timely filed.
4. For good cause shown, the Town Manager may in his/her discretion relieve the person or vendor from all or part of the penalties imposed under this section.

#### **SECTION 822. PENALTIES FOR FAILURE TO PAY**

1. A person or vendor 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.
2. 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.
3. An amount paid on or before an extended date for payment is timely paid.
4. For good cause shown, the Town Manager may in his/her discretion relieve the person or vendor from all or part of the penalties imposed under this section.

### **SECTION 823. PENALTIES FOR ATTEMPT TO EVADE OR DEFEAT TAX**

1. Any person or vendor 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.
2. If any part of an understatement of tax is shown to be due to fraud, a person or vendor shall be assessed a penalty of fifty percent (50%) of the underpayment of tax.
3. Any person who assists a person or vendor 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 824. CHARGES FOR ADMINISTRATIVE COSTS**

A person or vendor 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 Township. These charges shall be assessed unless the Township for good cause shown relieves the branch from the operation of this section.

### **SECTION 825. FAILURE TO COMPLY WITH CHAPTER**

Any person or vendor 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 Township or 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 jurisdiction of the 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 840, and that any suspension may be appealed pursuant to section 840.

## **SECTION 826. INTERFERENCE WITH ADMINISTRATION**

1. 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.
2. It shall be unlawful for any person willfully to fail to comply with a subpoena duly issued pursuant to this Chapter.
3. 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.
4. It shall be unlawful for any person with knowledge and intent to falsely verify by written declaration any return or document.
5. 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.
6. 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.T.C. subsection 1901-1906.
7. 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 840, and that any suspension may be appealed pursuant to Section 840.

## **SECTION 827. COLLECTION POWERS**

1. The Township 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 person or vendor or any property subject to lien, and any other powers available to the Township for collection of debts owed it.
2. The Township 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 Township shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

## **SECTION 828. SECURITY FOR PAYMENT**

Whenever necessary to secure the payment of any taxes due or reasonably expected to become due, the Commission or Township is authorized to require the person or vendor 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 person or vendor to furnish additional security as it becomes necessary.

## **SECTION 829. JEOPARDY ASSESSMENTS**

1. If the Auditor believes that the collection of any assessment or deficiency of any amounts imposed by this Chapter will be jeopardized by delay, he 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.
  - a. Evidence that collection of tax due is in jeopardy shall include documentation that:
    - i. The taxpayer is going out of business;
    - ii. The taxpayer has no Township sales tax license or has no permanent business location in the Township;
    - iii. 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;
    - iv. 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;
    - v. The taxpayer has remitted payment by check, which was dishonored;
    - vi. The taxpayer has failed to comply with a formal written request of the Auditor made pursuant to Section 819(e).
2. 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.
3. "Bond or Collateral", as required by this Section
  - a. shall mean either:
    - i. a bond issued in favor of the Township by a surety company authorized to transact business in the Nation or Arizona and approved by the Navajo Nation or the Arizona Director of Insurance as to solvency and responsibility, or

- ii. collateral composed of securities or cash which are deposited with, and kept in the custody of, the Auditor; and
  - b. 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.
4. If bond or collateral is not filed within the period prescribed by subsection 3 (b) 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 840. The filing of a petition by the taxpayer under Section 840, however, shall not stay the Township's rights to pursue any collection proceedings.
5. 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 840.
6. Within thirty (30) days after the date on which the Auditor furnishes written notice required by Section 830(3), the taxpayer, pursuant to Section 840 (1) (c), 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.
7. Within thirty (30) days after the Town Manager notifies the taxpayer of the determination he reached pursuant to subsection (6) 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 re-determine any part of the amount assessed or to take such other action as the Administrative Hearing Officer deems appropriate.
8. 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 840(4).
9. An action for judicial review can not 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 830. LIEN FOR TAXES**

1. If a person or vendor fails to pay any taxes after demand by the Township, the amount shall be a lien in favor of the Township upon all property or rights to property of those liable for collecting the taxes due under this Chapter.

2. 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 Township in a form available for inspection by the public.
3. The lien shall not be effective as against other parties until notice is recorded in the offices of the Township in a form available for inspection by the public.
4. 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 831. FORECLOSURE OF LIEN**

1. The Township 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.
2. The Commission by regulation may provide for the redemption of property levied upon, within time limits and on terms specified.
3. The effect of a levy upon any person or vendor for obligations due or payable by a person or vendor 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.
4. 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 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 person or persons liable for collecting the tax due under this Chapter who property or rights to property were levied upon.
5. The Township 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.
6. 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 person or vendor 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.

7. 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 832. APPLICATION OF PROCEEDS**

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

#### **SECTION 833. RELEASE OF LIEN**

1. Payment of the entire liability of the person or vendor on account of whose liability the lien arose shall operate to release the lien.
2. The payment of any part of the liability shall operate to reduce the amount of the lien by the amount paid.
3. 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 immediately cause a notation of the complete or partial release of the lien to be made in the record.
4. The Township may in its discretion release liens on certain property without payment of all outstanding liabilities, for good cause and where interests of the Township are adequately protected by other security.

#### **SECTION 834. INTERFERENCE WITH FORECLOSURE**

1. There is hereby created within the Township government, a Township Recorder who will record all liens and levies and maintain records of all actions taken regarding those liens and levies until the liens and levies are satisfied through payment, released by the Town Manager, released by the Nation's Supreme Court, or at least 10 years if the lien is not re-filed.
2. It shall be unlawful for any person to remove from the jurisdiction of the Navajo Nation (or the Township) any property on which there is a lien for taxes which is effective against that person pursuant to Section 830.
3. 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 Township 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.

4. 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 835. TRANSFER OF BUSINESS**

1. If a person buys substantially all of the assets of a person or vendor 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 person or vendor prior to the purchase.
2. 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.
3. The buyer shall make a written request and, within 30 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.
4. No consent to the assignment or transfer of any lease or other rights to engage in productive activity within the Township shall be granted by the Commission unless the Township first certifies that taxes arising from said activity have been paid, or that payment has been adequately secured.

#### **SECTION 836. 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 appropriate authority of the other taxing jurisdiction.

#### **SECTION 837. 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 838. STATUTE OF LIMITATIONS**

1. 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 2 and 4 of this section.
2. In the case of a fraudulent return with the intent to evade tax, no period of limitations shall apply.
3. 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 4 and 5 of this section.
4. The running of the period of limitations provided in subsections 1 and 3 of this section is suspended during any period the Commission or Township is prohibited by any court from making an assessment or commencing collection proceedings and during any period of appeal under Section 840.
5. The running of the period of limitations for collection may be suspended for any period agreed upon between the person and the Township.

#### **SECTION 839. PROCEDURE FOR REFUNDS**

1. Any person or vendor 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 Township. 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 840, and further provided that an issue determined pursuant to an appeal may not be reopened by the filing of a claim for refund.
2. 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 840, 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.
3. The Township 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 840.
4. If the Township determines, either on a claim for refund under this section, or in an appeal under subsection 840 on a claim or from an assessment, from which action no appeal is taken, that a person or vendor has made an overpayment, the Township shall refund the overpayment, with applicable interest, to the person or vendor.
5. Where the action of the Township on a claim for refund under this section, or in the appeal under subsection 840 on a claim or from an assessment, is then appealed, the Township shall make a refund of the overpayment determined by the order in that appeal, plus the applicable interest.

6. Provided, that if the person or vendor entitled to a refund owes unpaid taxes, the refund shall be offset and reduced by such unpaid amounts.
7. Where an overpayment occurred through mathematical error, or other mistake or verifiable change of fact and within the times allowed under subsections 1 and 2 of this section, the Commission by form or regulation may provide for a credit by offset in a current period.
8. No refunds or credits for taxes paid shall be made or allowed to any person or vendor 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 840. 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 Township or the 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 Town Manager 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, 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. 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 3) of this section.

### 3. Administrative Hearing Officer

- a. There is hereby established the position of Administrative Hearing Officer 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. The cost for the Hearing Officer shall be paid by the Township.
- 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 (2) 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 (2).
  - iii. The taxpayer must file a request for a hearing before a Hearing Officer within thirty (30) days of the issuance of a conference decision.
  - iv. 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.

- 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 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.
- 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 Hearing Officer shall subject the non-complying witness or party to sanctions.
- e. Conduct of Hearing. The Hearing Officer shall preside over the hearing and 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 Township, 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 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.

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 and the Township.

4. Appeal to the Supreme Court.

a. Appeals from final actions of the Commission or the Township, 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 (3) of this section may appeal the order to the Navajo 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 3(f).
  - 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 or Township actions in the Supreme Court shall be on the records made in the Commission or Township and not de novo, and shall be limited to the determination whether the action of the Commission or Township was not supported by the evidence, or was arbitrary, capricious, an abuse of discretion, beyond its authority, or otherwise contrary to applicable Navajo or federal law, except that where affirmation of the action would suspend a right of an appellant to engage in productive activity within the Township, the Supreme Court shall be empowered to affirm, reverse, or modify a Commission or Township action, or to remand the matter to the Commission or Township for further action, and it may stay the effect of an order suspending a right to engage in productive activity, pending the appeal.

#### **SECTION 841. ABATEMENT AUTHORITY**

Upon notice of assessment, or notice of denial of a claim for refund, or notice of other adverse action by the Township or Commission, the taxpayer may request a conference with the Town Manager 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.

1. 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 Town Manager may abate any part of the assessment determined to have been incorrectly, erroneously, or illegally made.
2. Upon a compromise of liability and according to the terms of the closing agreement formalizing the compromise, the Town Manager shall cause the abatement of the appropriate amount of the assessment.
3. Abatements in excess of \$1,000 shall be recorded in the offices of the Township 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 842. CLOSING AGREEMENTS**

1. If at any time after a final assessment of taxes, the Town Manager 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 Township, provided that such agreement shall be subject to approval by the legal counsel of the Township and the Commission.
2. 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.
3. As a condition for entering into a closing agreement, the Town Manager may require the provision of security for payment of any taxes due according to the terms of the agreement.
4. 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 843. CONFIDENTIALITY RULES**

1. It shall be unlawful for any employee or former employee of the Commission or Township to reveal to any individual, other than another employee or legal counsel of the Commission or Township, any information contained in the return of any person or vendor or any other information about any person acquired as a result of his or her employment by the Commission or Township, except:
  - a. To an authorized representative of the person or vendor;
  - b. To an employee of the government of the Navajo Nation or a member of the Navajo Nation Council authorized by the Commission or Township 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;
  - c. 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 Township to use the information for tax purposes only and that the receiving tribe or state has enacted a confidentiality statute similar to this section;
  - d. To an authorized representative of a federal agency, pursuant to the terms of a reciprocal agreement for the exchange of such information;
  - e. In any administrative or judicial proceeding to enforce any act or collect taxes, or in any matter in which the person or vendor has put its own liability for taxes or the amount thereof at issue;
  - f. In compliance with the order of any court of competent jurisdiction in which the information sought is material to the inquiry;

- g. In recording tax liens on the property of a person or vendor or collecting taxes by levy upon the property or rights to property of a person or vendor;
- h. In statistical releases not identifying the information provided as applicable to any single person;
- i. To the extent of revealing whether a person or vendor 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
- j. To the extent of revealing to the purchaser or intended purchaser of a person or vendor or the property thereof the amount and basis of any unpaid taxes for which the seller is liable.
- k. For purposes of this section, "employee of the Commission or Township" shall include any person for whose services the Commission or Township has contracted, provided that such person shall agree in the contract for services to abide by the provisions of this section.
- l. 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.
- m. The Township may further restrict the disclosure of information and provide for compliance with the provisions of this section.

#### **SECTION 844. EFFECTIVE NOTICE**

1. Notice required to be given by the Township 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 person or vendor 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.
2. Public notice of a lien shall be effective as to all property and rights to property of a person, vendor, or business so long as the description of the person, vendor, or business is sufficient to put a reasonable person on inquiry to ascertain the existence of a lien on the property of said person, vendor, or business.

#### **SECTION 845. INVESTIGATIVE AUTHORITY**

1. For the purpose of enforcing the provisions of this Chapter, the Township and the Commission are 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.

2. As a means for accomplishing the foregoing, the Township and the Commission are hereby vested with the power to issue subpoenas and summonses pursuant to regulations comporting with due process.

#### **SECTION 846. OATHS AND AFFIRMATIONS**

Any agent or employee designated by the Commission or Township 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 847. RECEIPTS; DISBURSEMENTS**

1. There is hereby created the Kayenta Township General Fund.
2. All money received by the Township as taxes shall be deposited forthwith to the credit of said Fund.
3. 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 5 of this section.
4. At the end of each month, the balance remaining in the Fund, after the payment of refunds under subsection 3 of this section shall be utilized to provide essential governmental services.
5. Notwithstanding the foregoing, the Commission shall by regulation 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. Commission shall by regulations establish an escrow account.

#### **SECTION 848. 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 849. EFFECTIVE DATES**

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

#### **SECTION 850. 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 851. RESERVED**

#### **SECTION 852. 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 or 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 in 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 of town sale, and therefore not exempt from retail sales tax.
7. The business, person or vendor 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 Township, postal receipts, or common carrier charges.

#### **SECTION 853. 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 854 – 899. RESERVED**