

RESOLUTION OF THE KAYENTA TOWNSHIP COMMISSION

Enacting the Business Sales Tax Regulations Implementing Chapter 8, Business Sales Tax Ordinance

WHEREAS:

1. The Kayenta Township Commission ("KTC") has the general authority and responsibility to govern for the welfare of the Kayenta Township ("Township") and its residents, including the enactment of such ordinances, rules and regulations as it deems in the best interest of the Township; and
2. Pursuant to §816 of the Business Sales Tax Ordinance the KTC has the responsibility to administer the Business Sales Tax and to adopt such rules and regulations as it deems proper and necessary to administer said tax. The KTC has found that the proper and efficient administration and enforcement of the tax ordinance requires substantive and procedural regulations.

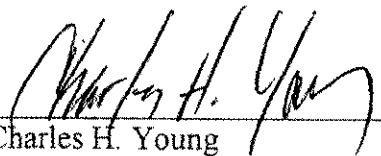
NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Kayenta Township Commission hereby enacts the Business Sales Tax Regulations to implement Chapter 8, Business Sales Tax Ordinance. The regulations are attached hereto as Exhibit "A" and incorporated herein by reference, to be effective immediately.
2. The Legal Counsel for the Township is hereby authorized to codify these regulations, making technical and grammatical corrections as he deems necessary.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Kayenta Township Commission at a duly called meeting in Kayenta, Navajo Nation (AZ), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed and 0 abstained, this 14th day of June, 2004.

Motion: Eugene Badonie
Second: Richard Mike



Charles H. Young
Chairperson

KAYENTA TOWNSHIP

Business Sales Tax Regulations
(As enacted June 14, 2004 by KTCJN-36-04)

**Kayenta Township
Business Sales Tax Regulations**

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Section 8.100 Authority

The Kayenta Township Commission promulgates these regulations pursuant to §816 of the Business Sales Tax Ordinance.

Section 8.101 Retail Sales

1. Gross receipts from the sales of tangible personal property to be resold by the purchaser in the ordinary course of business or to be leased out by a person in the business of leasing such personal property are not taxable.
2. The seller may establish the deduction for a sale for resale or a sale for lease by obtaining Form 500, "Sales Tax Exemption Certificate" from the purchaser.
3. Sales of products by any farmer or other agricultural producer of poultry, eggs, or dairy to consumers are deemed casual sales and are not taxable under the retail classification if such sales have an average monthly sales value of less than \$125.
4. The exemption of labor costs from the business sales tax in installation services in connection with retail sales, service industries and delivery charges is not allowed unless the charge for services is shown separately on the sales invoice and records.
5. Payments received after the conversion from a lease to a purchase are taxable as retail sales.
6. Consignment Sales
 - A. The following definitions apply for purposes of this rule:
 - i. "Consignee" is the party which is in the business of selling tangible personal property belonging to a "consignor."
 - ii. "Consignor" is the party with the legal right to contract the services of the consignee to sell tangible personal property on behalf of the consignor.
 - B. Gross receipts from consignment sales are subject to tax as retail sales.
 - C. A consignee shall obtain a sales tax license prior to engaging in the business of making consignment sales.
7. Discounts, Refunds, and Coupon Redemption
 - A. Cash discounts allowed the purchaser for timely payment are permissible as deductions from the sale price.
 - B. Refunds in cash or credit given on returned merchandise are considered to be a reduction of sales.

- C. When coupons issued by a manufacturer are redeemed by a retailer the amounts refunded to the purchaser are not permissible as deductions from the selling price of articles sold by the retailer. In these cases, the gross selling price is taxable.
- D. Coupons issued by a retailer and later redeemed by the retailer as a discount on the price of merchandise sold by him are considered a reduction of the selling price. In such cases the net selling price is subject to tax.

8. Retail Sales with Trade-ins

- A. When a retailer accepts tangible personal property as a trade-in for part or full payment on the sale of tangible personal property, the dollar amount of the payment represented by the trade-in is deductible from the retailer's gross receipts from that sale.
- B. A trade-in deduction shall be limited to the amount of the retailer's gross receipts on that sale.
- C. When the property traded in is subsequently sold at retail, the gross receipts from the transaction are taxable.

9. Delivery Charges in Connection with Retail Sales

- A. A charge by a retailer for delivery from the retailer's location to the purchaser's location, if separately stated on the sales invoice, is not taxable.
- B. When the freight cost is incurred any time prior to the time of the retail sale, such cost is part of the gross sale and, therefore, subject to the tax.

10. Artists

- A. Gross receipts from the sale of paintings, drawings, etchings, sculptures, craftwork, other artwork or reproductions of such items to final consumers shall be taxable as a retail sale if the person is making regular sales of these items.
- B. Gross receipts from the sale of paints, canvasses, frames, sculpture ingredients, and other items which will become an integral part of the finished product shall not be taxable if sold to a creating artist who is regularly engaged in the business of creating and selling paintings, drawings, etchings, sculptures, craftwork, other artwork, or reproductions of such items. Sales of brushes, easels, tools, and similar items to be consumed by the creating artist shall be taxable.
- C. Gross receipts from the sale by the creating artist of a painting, drawing, etching, sculpture, or a piece of craftwork that is not a reproduction of an original work shall not be taxable if:
 - i. The sale is a casual sale; or

- ii. The sale is of commissioned artwork by an individual artist. For purposes of this rule, "commissioned artwork" is a custom, one-of-a-kind art creation made by the individual artist pursuant to the particular requirements of a specific purchaser.
11. Gross receipts from sales of the following items are deductible from the tax base:
 - A. Drugs on a prescription.
 - B. Any item used in the practice of traditional Navajo medicine, provided the item is used for such purposes.
 - C. Medical oxygen.
 - D. Insulin, insulin syringes, and glucose strips whether or not prescribed.
 - E. Prosthetic appliances prescribed or recommended by a statutorily authorized individual.
 - F. Durable medical equipment.
 - G. Prescription eyeglasses and contact lenses.
 - H. Hearing aids.
 12. A retailer's gross receipts from the sale of postage stamps are not included in the tax base under retail sales if the stamps are sold for the purpose of transporting mail.
 13. Gross receipts from sales of tangible personal property made in the Navajo Nation, interstate or foreign commerce are deductible from the tax base if all of the following apply:
 - A. The order is received from a location outside of the Township; and
 - B. The retailer ships or delivers the tangible personal property to a location outside of the Township for use outside of the Township.
 14. Gross receipts from sales made by florists are taxable. Delivery and relay or transmittal charges, when separately stated, are deductible from the tax base.
 15. Gross receipts from sales to non-Indians are subject to the tax unless otherwise exempt.
 16. Gross receipts from the sale of tangible personal property to the Navajo Nation, state or their political subdivisions are taxable unless otherwise exempt. Gross receipts from the sale of tangible personal property to the Federal Government or its departments and agencies are not taxable.

17. Gross receipts from the sale of tangible personal property to nonprofit churches, schools, and other nonprofit organizations are taxable unless otherwise exempt.
18. Gross rental receipts from home site leases are exempt from the sales tax.
19. Tax-exempt foods
 - A. Normally, all food purchases are subject to the sales tax. Tax exempt foods are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1979, to be purchased with food coupons issued by the United States Department of Agriculture.
 - B. Tax-exempt food shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1979.
 - C. The following are examples of items which the Township will consider as tax exempt food, provided these items are purchased with food coupons issued by the United States Department of Agriculture:

bread and flour products
 vegetables and vegetable products
 candy and confectionery
 sugar, sugar products and substitutes
 cereal and cereal products
 butter, oleomargarine, shortening and cooking oils
 cocoa and cocoa products
 coffee and coffee substitutes
 milk and milk products
 eggs and egg products
 tea
 meat and meat products
 spices, condiments, extracts and food colorings
 fish and fish products
 frozen foods
 soft drinks and soda (including bottles on which a deposit is required to be paid)
 fruit and fruit products
 packaged ice cream products
 dietary substitutes
 ice cubes and bottled water including carbonated and mineral water
 purchases of seed and plants for use in gardens to produce food items for personal consumption

Section 8.102 Prime Contracting

1. Taxpayer Bonds for Contractors

- A. A surety bond shall include a bond issued by a company authorized to execute and write bonds in the Navajo Nation and Arizona as a surety or composed of securities or cash which are deposited with the Township.
- B. The businesses subject to these bonds are grouped in accordance with the standard industry classifications by average business activity. The business classes and bond amounts are as follows:
 - i. Two thousand dollars for:
 - a. General contractors of residential buildings other than single family;
 - b. Operative builders;
 - c. Plumbing, air conditioning, and heating, except electric;
 - d. Painting, paper hanging;
 - e. Decorating;
 - f. Electrical work;
 - g. Masonry stonework and other stonework;
 - h. Plastering, drywall, acoustical and insulation work;
 - i. Terrazzo, tile, marble and mosaic work;
 - j. Carpentry;
 - k. Floor laying and other floor work;
 - l. Roofing and sheet metal work;
 - m. Concrete work;
 - n. Water well drilling;
 - o. Structural steel erection;
 - p. Glass and glazing work;
 - q. Excavating and foundation work;
 - r. Wrecking and demolition work;
 - s. Installation and erection of building equipment;
 - t. Special trade contractors; and
 - ii. Seven thousand dollars for:
 - a. General contractors of single family housing;
 - b. Water, sewer, pipeline, communication and power- line construction.
 - iii. Seventeen thousand dollars for:
 - a. General contractors of industrial buildings and warehouses;
 - b. General contractors of nonresidential buildings other than single family;
 - c. Highways and street construction except elevated highways.
 - iv. Twenty-two thousand dollars for heavy construction.
 - v. One-hundred two thousand dollars for bridge, tunnel and elevated highway construction.

2. The bond shall not expire prior to two years after the transaction privilege license is issued. Upon lapse or forfeiture of any bond by any licensee, the licensee shall deposit with the Township another bond within five business days of the licensee's receipt of written notification by the Township.
3. All persons engaging in the business of contracting are required to obtain a Sales Tax license and to file reports on a basis to be determined by the Township whether or not any tax is payable.
4. Construction projects performed for the Navajo Nation, Township, state, cities, counties, or any subdivision or agencies thereof, are taxable.
5. A person engaged in the business of leveling, ditching, well drilling, installing pumps in wells, and original land clearing for others is taxable under prime contracting.
6. Agricultural production on improved farm lands is not taxable.
7. Installation of equipment which becomes permanently attached in a plant or other structure is taxable as a contracting activity, not retail installation.

Section 8.103 Hotel, Motel, Bed and Breakfast

1. Gross receipts from providing lodging obtained for a continuous block of time for 30 or more consecutive days shall not be taxable under the transient lodging classification from the first day of occupancy.
2. Lodging obtained for 30 more consecutive days is considered a residential rental. Commercial and residential rentals are not defined in the Business Sales Tax Ordinance. Long term residential home site rentals are not taxable.
3. If a hotel, motel, or bed and breakfast facility is engaged in the business of providing lodging and engages in the business of providing meals, the gross receipts from lodging shall include receipts from restaurant activities.
4. Gross receipts from the sale of tangible personal property by hotel, motel, or bed and breakfast facilities such as from magazine stands, gift shops, or in-room food or beverage bars shall be subject to tax under retail sales.

Section 8.104 Printing

1. Gross receipts from the business of printing or other reproduction of books, periodicals, magazines, business or professional stationery, and of any other articles copied or reproduced by printers, publishers, engravers, embossers, or copiers, is taxable.
2. The income from sales made by a job printer of materials on which no printing or other reproduction is done is subject to tax under retail sales.
3. A job printer may not take a deduction for cost of labor or materials employed.

4. Photography does not fall within printing but is included under the retail sales as professional services.

Section 8.105 Common Carriers

1. Gross proceeds of sales or gross income from charges for transporting persons, packages, materials, or freight from one point to another point in the Township is included in the tax base).
2. Gross income from sales by telephone or telegraph corporations, whether the corporations are privately or publicly owned, for all telephone service (including cellular, cable, or satellite telephone service), Fax or telegraph service provided to residential and commercial consumers within the Township is taxable.

Section 8.106 Rental, Lease of Tangible Personal Property

1. Gross income derived from the rental of tangible personal property is included in the tax base unless a specific statutory exemption, exclusion, or deduction applies. Examples of tangible personal property include televisions, cars, trucks, lawnmowers, floor polishers, tuxedos, uniforms, furniture, towels, and linens.
2. Gross income from the rental of tangible personal property includes charges for installation, labor, insurance, maintenance, repairs, pick-up, delivery, assembly, set-up, personal property taxes, and penalty fees even if these charges are billed as separate items, unless a specific statutory exemption, exclusion, or deduction applies.
3. The rental location of the equipment leased by a Township lessor to a lessee who takes possession of the property in the Township is taxable.
4. A lessor's gross income from the rental of tangible personal property to a school, church, or other nonprofit organization is taxable unless a specific statutory exemption, exclusion, or deduction applies.

Section 8.107 Restaurant

1. A restaurant's gross proceeds of sales or gross income from sales of food or drink to an employee of the United States Government, the Navajo Nation Government, the state or its political subdivisions, or any other government agency, or its employees is included in the tax base under the restaurant classification.
2. A sale of meals to a school, church or charitable institution is exempt under Section 806(3).

3. A restaurant's gross proceeds of sales or gross income from the operation of amusement devices such as coin operated computer games and juke boxes are included in the tax base.
4. If a restaurant cannot specifically segregate the charges for gratuities or if any portion of the amounts charged for gratuities is not distributed to the employees involved, the total gross receipts from the gratuities are included in the tax base of the restaurant.

Section 8.108 General

1. "Casual sale" means an occasional transaction of an isolated nature made by a person who is not engaged in the business of selling, within or without the Navajo Nation or the Township, the same type or character of property as that which was sold.
2. The sales tax is imposed directly on the customer engaging in a taxable transaction with a business within the Township. The vendor shall be liable for the tax, regardless of whether or not the vendor passes on the economic burden of the tax to the customer.
3. A credit may be claimed for the 3.0% of the 5.0% business sales tax paid to the Township against the sales tax assessed by the Navajo Nation after April 1, 2002, if the tax has been timely paid to the Township. A taxpayer shall compute the credit, using the full amount of the tax as required to be reported on the Township tax return, including any excess tax collected.
4. The revenues from the business sales tax that is deposited into the General Fund are to be utilized to provide essential governmental services. For purposes of this regulation, the payment of personal expenses and debts, e.g., utility bills, vehicle payments, rent, medical bills and funeral expenses are not considered essential governmental services and, therefore, use of these revenues for such purposes is prohibited.
5. The vendor is responsible for the payment of tax and therefore shall provide sufficient documentation in support of all deductions.
6. The Township has prescribed certificates (Forms CPM 500 and 505) for establishing entitlement to statutory deductions and exemptions. Reproductions of the blank prescribed original certificate shall be acceptable for use.
 - A. Form 500 is the "Sales Tax Exemption Certificate" for documenting sales that are exempt from the business sales tax.
 - B. Form 500 must be filled out completely including a statement as to what the items purchased will be used for. If Form 500 is not collected from the purchaser at the time of the purchase, the vendor will be allowed thirty days from the time such documentation is requested by the Township to obtain a completed, signed Form 500 from their customer. Other forms of documentation may be accepted if they contain the information requested on Form 500 and substantially document an exempt sale.

- C. Form 505 is the “Prime Contractor’s Certificate” for documenting subcontractor’s status on a job within the Township.
 - D. Form 505 must be completed and signed by the prime contractor who is assuming liability for the tax on said job. Other forms of documentation may be suitable such as contracts or statements signed by the prime contractor.
7. A vendor collecting tax from a purchaser shall keep and preserve suitable records and other books and accounts necessary to determine the tax collected for the statutorily prescribed limitation period.
- A. If the sales invoice separately states the tax collected, that amount is the minimum amount that must be paid to the Township. If the stated amount is less than the 5.0% tax required, the vendor must pay the difference between the amount collected and the amount due. If the amount stated exceeds the 5.0% tax due, the excess tax must be either refunded to the customer or sent to the Township as “Excess Tax Collected.”
 - B. If the tax is not separately stated or the words “tax included” appears on the sales invoice, the tax must be factored out of the amount of income received from that customer. The sales tax factor for 5.0% is 0.04761905. To calculate the tax on invoices that do not separately state the tax, multiply the total taxable sale by the factor. If the sales tax is not separately stated on the invoice and collected from the customer, the business is liable for the factored tax due.
8. The Use Tax imposes upon the buyer a tax on the business’s purchase of tangible personal property from an out-of-state or out-of-town vendor.
- A. The tax applies to the use, storage, or consumption of items purchased from out-of-state or out-of-town suppliers by a Township business.
 - B. In cases where the Township business buyer has paid sales tax to an out-of-state or out-of-town seller, the amount paid may be applied against his Township Use Tax liability.
9. For each tax period in which there is any unpaid tax due, the taxpayer shall multiply the sales tax due by one 1.0% percent (rate of simple interest) and add that amount to the tax due until the full amount of tax due or audit assessment is paid to the Township. The interest rate of 1.0% is designated as the interest rate for all taxes collected under the Township Business Sales Tax Ordinance.

Section 8.109 Authority of Town Manager to Rule on, Abate or Compromise Liability Arising from Denial of Claims for Refund or Objections to an Assessment or other Adverse Action

- 1. Pursuant to Sections 840, 841 and 842 the Town Manager has the duty and responsibility to rule on a taxpayer’s objection to a denial of a claim for refund, an assessment or other adverse action; the town manager can abate any part of the assessment or compromise the

tax liability arising from such denials, objections or other adverse actions. It is a condition precedent to the exercise of the Town Manager's authority that the taxpayer must:

- A. file a written objection with the Township and
 - B. file with the Township a written request for a conference with the Town Manager.
2. The Town Manager's decision whether or not to grant a stay of payment of taxes pending a decision is not subject to Commission approval nor can such decision be appealed to the Administrative Hearing Officer or the Supreme Court.
 3. Payment of less than \$1000.00 on a claim for refund is not subject to approval by the Commission or the Town Manager; such payments must be approved by the Financial Manager and notice shall be given to the Town Manager.
 4. Neither the Town Manager nor any Township employee is authorized to waive the application and enforcement of any tax ordinance or regulation, unless specifically authorized by law.
 5. Taxpayers petitioning the Township for special rates, favorable rates, or exemptions or deductions shall petition in writing to the Township. In the interest of protecting fair treatment of all taxpayers under Business Sales Tax Ordinance, such variances can only be approved through the following procedure:
 - A. The variance must be pre-approved by the Town Manager and the Commission; and
 - B. The variance must be enacted as an amendment to the Business Sales Tax Ordinance pursuant to the procedures for amending Township ordinances; and
 - C. The variance must be approved pursuant to the amended ordinance.

Section 8.110 Suspense Fund

As required by Section 847 of the Business Sales Tax Ordinance, the Township has established an escrow account named the Tax Administration Suspense Fund.

1. Ten percent (10%) of each payment for taxes shall be maintained in the Fund.
2. No later than 60 days prior to the end of each fiscal year, the Kayenta Township Commission shall make a determination as to what amount, if any, may be released from the Fund to the Kayenta Township General Fund.