

CD-74-82, Exhibit B, December 14, 1982.

Chapter 11. Young Adult Conservation Corps [Deleted]

History

Note. Chapter 3, previously entitled "Young Adult Conservation Corps" has been deleted from the Code as the Navajo Nation no longer has a contract with the BIA to administer the ACC program.

Title 24

Taxation

Chapter 1. Uniform Tax Administration Statute

§ 101. Short title

This Chapter shall be known as Chapter One of the Navajo Tax Code, the Uniform Tax Administration Statute.

History

CJY-52-95, July 20, 1995.

§ 102. Purpose

The purpose of this Chapter is to provide statutory rules applicable to all of the taxes imposed by the Navajo Nation.

History

CJY-52-95, July 20, 1995.

§ 103. Administration

A. The Navajo Tax Commission is empowered to administer, and delegate the administration of, all Navajo taxes and, to that end, shall be empowered to adopt substantive and procedural rules and regulations, orders implementing its decisions and rulings, and instructions such as may be necessary to the proper and efficient administration of these laws.

B. The Office of the Navajo Tax Commission shall have day-to-day responsibility for the administration of the Navajo Tax Code, and shall have all powers consistent with its plan of operation.

History

CJY-52-95, July 20, 1995.

§ 104. Definitions

Subject to additional definitions (if any) contained in the subsequent

sections of this Chapter or in subsequent chapters:

A. "Code" means the Navajo Tax Code, which includes this Chapter and any tax statute enacted by the Navajo Nation Council.

B. "Control" means the right or any kind of ability to direct the performance or activity of another, whether legally enforceable or not, and however such right may be exercisable or exercised.

C. "Commission" means the Navajo Tax Commission.

D. "Fraud" occurs when any person:

1. Willfully makes and subscribes any return, statement or other document that contains or is verified by a written declaration that it is true and correct as to every material matter and that the person does not believe to be true and correct as to every matter;

2. Files any return electronically, knowing that the information in the return is not true and correct as to every material matter; or

3. With intent to evade or defeat the payment or collection of any tax, or knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, removes, conceals, or releases any property on which levy is authorized or that is liable for payment of tax or aids in accomplishing or causes the accomplishment of any of the foregoing.

E. "Month" means any consecutive 30 calendar day time-period for purposes of this Chapter.

F. "Office of the Navajo Tax Commission" is located within the Navajo Nation Executive Branch and is responsible for the administration of the Navajo Tax Code.

G. "Person" means any organization, whether a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, company, corporation, or government (other than the government of the Navajo Nation and any wholly owned subdivision or enterprise of the Navajo Nation government), or any part, division, or agency of any of the foregoing, and an individual or group of individuals.

H. "Received" means:

1. The postmark date, if action is taken by mail;

2. The date actually received by the Navajo Nation, when documents and/or payments are hand-delivered; or

3. The date of receipt by the Navajo Nation, in the case of wire transfer payments.

I. "Regulations" means the regulations adopted by the Commission.

J. "Related persons" means two or more persons owned or controlled, directly or indirectly, by the same person. As applied to natural persons, "related persons" means two or more natural persons who have a legal relationship arising out of marriage, adoption, or blood, through the third degree of kinship.

K. "Return" means any document required to be filed when paying any Navajo Nation tax, as contrasted with other documents required to be filed that are not associated with the actual payment of taxes. Return also includes any attachments, such as schedules or forms that are associated with any return.

L. "Taxes" means any tax, interest, penalties, and costs, imposed or assessed individually or collectively pursuant to the Code.

M. "Taxpayer" means the person liable for the taxes or the person responsible for collecting and remitting the taxes.

History

CD-66-06, December 22, 2006. Added definitions for "Month", "Received", and "Return", and adjusted subsequent subsection designations accordingly.

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

Annotations

1. Occupancy tax

"The Navajo Nation Hotel Occupancy Tax generally applies to the class of hotel-keepers within the Navajo Nation." *In the Matter of Atkinson Trading Company, Inc.*, 7 Nav. R. 275, 287 (Nav. Sup. Ct. 1997).

§ 105. Assessment of tax

A. The taxes imposed by the Code are assessed for a statutory period and are the liability of the taxpayers.

B. The Office of the Navajo Tax Commission is authorized to assess taxes against a person and those assessments are presumed to be correct.

1. When it appears that the return filed by a person understates the taxes due under the Code, the Office of the Navajo Tax Commission is authorized to assess the person for any tax deficiency, interest, penalties, and costs. The assessment is binding on the person but may be appealed in accordance with rules and regulations.

2. If no return is timely filed as required, the Office of the Navajo Tax Commission is authorized to make an estimate of the tax due and to assess the person for that tax, interest, penalties, and costs. This assessment is binding on the person unless shown to be clearly erroneous.

3. If a person fails to provide information within its possession or control which is relevant to a determination of taxes due and which it is required to provide under the Code, the Office of the Navajo Tax Commission is authorized to make an estimate of the tax due and to assess the taxpayer for that tax, interest, penalties, and costs. This assessment is binding on the taxpayer unless it is shown that the estimate, on the basis of the best information then available to the Office of the Navajo Tax Commission, was clearly erroneous or unless the Office of the Navajo Tax Commission for other good cause shown relieves the taxpayer from the operation of this Section.

C. Any taxes assessed shall become the liability of the taxpayer on the date due. If the taxpayer is a corporation or a trust or a part thereof, then the corporation or trust shall be liable for the taxes. If the taxpayer is an association, joint venture, or partnership, or a part thereof, then all the associates, participants, or partners both general and limited, shall be jointly and severally liable for the taxes. Companies shall be treated as corporations or partnerships consistent with their treatment by the Internal Revenue Service.

D. The owners of the interests in a unit or lease shall be jointly and severally liable for the taxes assessed with respect to said unit or lease.

E. Consistent with § 129 of this Chapter, the Office of the Navajo Tax Commission shall have the authority to redetermine incorrect or erroneous assessments, to issue amended assessments, if necessary, and to assess unassessed possessory interests as of the date on which they first became assessable.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

§ 106. Waiver of taxes

Any waiver of tax or associated interest requires a two-thirds (2/3) vote of the full membership of the Navajo Nation Council. The Office of the Navajo Tax Commission has the authority to relieve a taxpayer of penalties and certain administrative fees, as set out in Sections 112-116 below.

History

CD-66-06, December 22, 2006.

Library References

Indians <KEY>32(9).

Westlaw Topic No. 209.

§ 107. Nondiscrimination

No provision of this Code shall be construed as imposing a tax which discriminates on the basis of whether a taxpayer is owned or controlled by members of the Navajo Nation.

History

CJY-52-95, July 20, 1995.

§ 108. Designation of Individual

On an annual basis, each taxpayer must designate and provide the mailing address of a natural person for the purposes of notice, by filing a Form 100. The forms must be submitted each year to the Office of the Navajo Tax Commission by January 15, even if no changes have occurred since the prior filing. In addition, an updated form must be filed within 30 days of a change in circumstances. The Commission may by regulation impose requirements as to the individuals who shall be designated under this Section, and may require information or documentation it deems necessary for the proper and efficient administration of these taxes to be provided with the designation. For purposes of this Section only, the term "taxpayers" shall not include persons on whom the Hotel Occupancy Tax is imposed, but shall include persons responsible for collecting and remitting the Hotel Occupancy Tax. In addition, for purposes of this Section only, "taxpayers" shall include all persons owning an interest in a lease subject to the Navajo Possessory Interest Tax.

History

CD-66-06, December 22, 2006.

CJY-52-95, July 20, 1995.

§ 109. Extension of time

A. Forms 200 and 245: A taxpayer may request an extension of time for filing. The request must be made to the Office of the Navajo Tax Commission by filing the required extension request form on or before the due date. An automatic extension of 15 days will be granted by the Office of the Navajo Tax Commission.

B. Forms other than Forms 200 and 245: A taxpayer may request an extension of time for filing. The request must be made to the Office of the Navajo Tax Commission by filing the required extension request form on or before the due date, and an estimated payment of the tax due must be made at the time of the request. An automatic extension of 60 days will be granted by the Office of the Navajo Tax Commission.

History

CJY-52-95, July 20, 1995.

§ 110. Record keeping

Every taxpayer shall keep full and true records of all taxable activities, in accordance with regulations.

History

CJY-52-95, July 20, 1995.

§ 111. Interest imposed

Rates of interest shall be established by regulation. 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. The Commission is authorized to set different rates of interest for underpayments and overpayments.

History

CJY-52-95, July 20, 1995.

§ 112. Penalties for failure to file

A. If any taxpayer fails to timely file any tax return, a penalty shall be assessed for each month or fraction thereof that the return is not filed, in the amount of five percent (5%) of the tax due for the period; provided, however, that the minimum amount for the total penalty imposed under this Section shall be fifty dollars (\$50.00).

B. The total penalty assessed in Subsection (A) shall not exceed twenty-five percent (25%) of the tax due, except where the fifty dollars (\$50.00) minimum applies.

C. If a person fails to timely file a Form 100, Fuel Excise Tax Retailer Report, Carrier Report, or Refiner Report, a one-time fifty dollar (\$50.00) penalty shall be assessed for each document that is not timely filed.

D. If a person fails to timely file a Possessory Interest Tax Form 200 or 245, a one-time penalty of fifty dollars (\$50.00) shall be assessed for each form that is filed after the due date but within 30 days of that date, and the penalty shall be increased to one-hundred and fifty dollars (\$150.00) if the form is filed more than 30 days after the required date.

E. For the purposes of this Section, a form filed on or before an extended due date for filing is timely filed.

F. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the tax payer from all or part of the penalties imposed under this Section.

History

CD-66-06, December 22, 2006. Amended generally and added subsections E and F.

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

§ 113. Penalties for failure to pay

A. A taxpayer failing to timely pay an amount of tax by the time due shall be assessed an immediate penalty of five percent (5%) of the amount of the underpayment.

B. For each month the payment is overdue, an additional penalty shall be assessed of five-tenths percent (0.5%) of the underpayment.

C. The total penalty imposed under this Section shall not exceed ten percent (10%) of the tax due.

D. For purposes of this Section, a payment received on or before an extended date for payment is timely paid.

E. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the taxpayer from all or part of the penalties imposed under this Section.

History

CD-66-06, December 22, 2006. Amended subsections A and B.

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

§ 114. Penalties for attempt to evade or defeat tax

A. Any taxpayer understating the tax imposed by the Code through negligence of the Code and regulations, but without the intent to defraud, may be assessed a penalty of two hundred fifty dollars (\$250.00), plus twenty-five percent (25%) of the underpayment of tax.

B. Any taxpayer understating the tax imposed by the Code through reckless disregard of the Code and regulations, but without the intent to defraud, shall be assessed a penalty of two hundred fifty dollars (\$250.00), plus twenty-five percent (25%) of the underpayment of tax.

C. If any part of an understatement of tax is shown to be due to fraud, the taxpayer shall be assessed a penalty of five hundred dollars (\$500.00), plus fifty percent (50%) of the underpayment of tax.

D. Any person who willfully assists a taxpayer in the fraudulent understatement of tax due under the Code shall be subject to a penalty of five hundred dollars (\$500.00), plus twenty-five percent (25%) of the underpayment of tax.

E. Any liability arising under this Section shall be assessed and collected as taxes imposed by the Code.

F. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the taxpayer from all or part of the penalties imposed under this Section.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

§ 115. Charges for administrative costs

A. A taxpayer failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including, but not limited to, attorney fees and other costs of collection.

B. For good cause shown, the Office of the Navajo Tax Commission may relieve the taxpayer from all or part of the charges imposed under this Section.

History

CD-66-06, December 22, 2006. Amended subsection A.

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

§ 116. Failure to comply with Code

A. Any taxpayer who fails to comply with a requirement: to designate an individual, to file a return, to provide information or documents, to allow access to equipment within its possession or control, to furnish a surety bond or other security, to comply with a duly issued subpoena, or to comply with a lawful order of the Office of the Navajo Tax Commission, may have all or some of its rights to engage in productive activity within the Navajo Nation suspended, until compliance is made or for such shorter time as the Office of the Navajo Tax Commission may provide.

B. Upon receipt of a notice of non-compliance issued by the Office of the Navajo Tax Commission, a taxpayer has 30 days in which to come into compliance. If the taxpayer fails to do so, the Office of the Navajo Tax Commission shall issue a notice of intent to suspend. The taxpayer shall have 30 days in which to come into compliance or to appeal only the notice of intent to suspend pursuant to § 131. This right of appeal is the sole remedy. Failure on the taxpayer's part to act within the 30 days shall result in the Office of the Navajo Tax Commission issuing a final order of suspension. In addition, if an appeal is decided adverse to a taxpayer, the Office of the Navajo Tax Commission shall issue a final order of suspension.

C. The Navajo Nation Division of Public Safety shall enforce the final order of suspension, which shall remain in effect until the taxpayer comes into compliance.

History

CJY-52-95, July 20, 1995.

§ 117. Interference with administration

Information concerning criminal interference with administration of the Code shall be provided to the Office of the Prosecutor or appropriate authorities for appropriate action.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

§ 118. Collection powers

A. In accordance with the provisions of the Code, the Office of the Navajo Tax Commission has the power to collect any taxes assessed, including the power to attach and seize the assets of a taxpayer or any property subject to lien. In addition, the Office of the Navajo Tax Commission has all other powers available to the Navajo Nation for collection of debts owed it.

B. The Office of the Navajo Tax Commission may 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 suit or enforcement proceedings shall not constitute a waiver of sovereign immunity and further provided that the Office of the Navajo Tax Commission shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

History

CJY-52-95, July 20, 1995.

§ 119. Security for payment

Whenever necessary to secure the payment of any taxes due or reasonably expected to become due, the Office of the Navajo Tax Commission is authorized to require the taxpayer to furnish an acceptable surety bond in an appropriate amount. The Commission shall prescribe by regulation the terms and conditions for requiring such security. For purposes of § 131, the requirement of security for payment shall be considered an adverse action.

History

CJY-52-95, July 20, 1995.

§ 120. Lien for taxes

A. If a taxpayer fails to pay any taxes after demand or assessment by the Office of the Navajo Tax Commission, or fails to provide security as set out in § 119, the amount shall be a lien in favor of the Navajo Nation upon all property or rights to property of those liable under § 105.

B. The lien shall arise at the time the demand or assessment 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 related persons without notice.

C. Provided, that with respect to a required return, a lien shall arise for any unpaid taxes at the time filing is due without further demand or assessment.

D. 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.

E. A lien shall be effective as against other parties upon notice being recorded in the offices of the Office of the Navajo Tax Commission and the Business Regulatory Department in a form available for inspection by the public.

F. The Commission may by regulation exempt certain property from the operation of the lien created by this Section.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

§ 121. Priority of lien

A lien arising pursuant to § 120 shall have priority over all other liens imposed by any government other than the Navajo Nation, regardless of the date of perfection.

History

CJY-52-95, July 20, 1995.

§ 122. Release of lien

A. The lien shall be released upon payment of the entire liability of the taxpayer on account of whose liability the lien arose.

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 Office of the Navajo Tax Commission thereafter receives all or part of the taxes giving rise to the lien, the Office of the Navajo Tax Commission will cause a notation of the complete or partial release of the lien to be made in the record.

D. The Office of the Navajo Tax Commission may in its discretion release liens on certain property without payment of all outstanding liabilities, for good cause and where the interests of the Navajo Nation are adequately protected by other security.

History

CJY-52-95, July 20, 1995.

§ 123. Foreclosure of lien

A. The Office of the Navajo Tax Commission may foreclose upon any or all items of property or rights to property subject to a lien for taxes by seizure and sale, to be conducted as set forth in this Section and accompanying regulations.

B. Seizure:

1. After seizure of property or rights to property, the Office of the Navajo Tax Commission shall notify the owner thereof of the amount and kind of property seized and of the total amount demanded in payment of tax.

2. Any person shall have the right to pay the amount due, together with the expenses of the proceeding, or furnish acceptable security for the payment thereof, to the Office of the Navajo Tax Commission at any time prior to the sale thereof, and upon payment or furnishing of security, the Office of the Navajo Tax Commission shall restore the property to him, and all further proceedings in connection with the seizure of the property shall cease from the time of the payment.

3. A taxpayer may appeal a seizure, and appeals shall be taken pursuant to § 131 under the following conditions:

a. The seized property shall not be removed from the jurisdiction of the Navajo Nation;

b. The taxpayer must provide an affidavit identifying all property or rights to property owned or controlled by the taxpayer located within the jurisdiction of the Navajo Nation.

4. The effect of a seizure upon any person for obligations due or payable to a taxpayer or persons liable under § 105 shall be continuous from the date the seizure is first made until the liability out of which the seizure arose is satisfied.

5. Any person in possession of or obligated with respect to property or rights to property which has been seized who, upon demand by the Office of the Navajo Tax Commission, surrenders such property or rights to property (or discharges said obligation) to the Office of the Navajo Tax Commission, shall be discharged from any obligation or liability to the taxpayer or persons liable under § 105 whose property or rights to property were seized.

C. Sale of Seized Property:

1. The Office of the Navajo Tax Commission shall publish a notice of sale, setting forth the time and place of the sale.

2. Proceedings for the sale of property shall be effective to transfer to the purchaser all right, title, and interest therein of the taxpayer or person whose property or rights to property were seized. Provided, that where required by federal law the sale of property shall not be final without the approval of the Secretary of the Interior or his designee.

D. The Office of the Navajo Tax 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 Office of the Navajo Tax Commission.

History

CJY-52-95, July 20, 1995.

§ 124. Application of proceeds

A. Money seized by the Office of the Navajo Tax Commission, or realized from property or rights to property seized, shall be applied first to the expenses of the seizure and proceedings for the conversion of property, and then to the liability for costs, penalties, interest, and tax, in that order.

B. The balance, if any, shall be remitted to the person or persons who have claimed and proved legal entitlement thereto, provided that the Office of the Navajo Tax Commission may set time limits or other reasonable conditions on the making and proving of such claims.

History

CJY-52-95, July 20, 1995.

§ 125. Interference with foreclosure

A. No person shall remove from the jurisdiction of the Navajo Nation any property on which there is a lien for taxes pursuant to § 120.

B. No person in possession of or obligated with respect to property or rights to property which have been seized, shall fail to surrender such property or rights or to discharge such obligation upon demand by the Office of the Navajo Tax Commission therefor, 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.

C. 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 seizure was made. Any liability arising under this section shall be assessed and collected as taxes imposed by the Code.

History

CJY-52-95, July 20, 1995.

§ 126. Transfer of business

A. If a person buys substantially all of the assets of a taxpayer within the Navajo Nation, that person shall withhold from the purchase price and pay to the Office of the Navajo Tax Commission the amount of taxes due on account of activities of the taxpayer prior to the purchase.

B. Prior to transfer, a buyer may make a written request and, within 45 days after the owner's records are made available for audit, the Office of the Navajo Tax 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.

C. Any buyer failing to make such a request or failing to withhold taxes from the purchase price 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 taxes imposed by the Code.

D. No consent to the assignment or transfer of any lease or other rights to engage in productive activity within the Navajo Nation shall be granted by the Navajo Nation unless the Office of the Navajo Tax Commission first certifies that all applicable taxes have been paid, or that payment has been adequately secured.

History

CJY-52-95, July 20, 1995.

§ 127. Mutual assistance agreements

The Office of the Navajo Tax 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 Navajo Tax Commission and the Intergovernmental Relations Committee of the Navajo Nation Council; no other committee approval is required.

History

CJY-52-95, July 20, 1995.

§ 128. Prohibition of suits

No suits for the purpose of restraining the assessment or collection of the taxes imposed under the Code shall be maintained in any court by any person, whether or not such person is the person against whom such taxes were assessed. All actions concerning the application of the Code shall be brought pursuant to § 131.

History

CJY-52-95, July 20, 1995.

§ 129. Statute of limitations

A. Except for the Business Activity Tax and the Hotel Occupancy Tax, taxes imposed and required to be collected by the Code shall be assessed within four years after the return is filed, or the Possessory Interest Tax notice of assessment is issued, except as provided in Subsection (B) of this Section. Taxes imposed and required to be collected by the Business Activity Tax and the Hotel Occupancy Tax shall be assessed within six years after the return is filed, except as provided in Subsection (B) of this Section.

B. Exceptions to the statute of limitations on assessment:

1. In the case of fraudulent conduct, no period of limitations shall apply.

2. In the case of failure to file a return, declaration of interest, or other required document, no period of limitations shall apply.

3. The running of the period of limitations on assessment is suspended during any period the Office of the Navajo Tax Commission is prohibited by any court from making an assessment.

4. The running of the period of limitations on assessment may be suspended for any period agreed upon between the taxpayer and the Office of the Navajo Tax Commission.

C. Except for the Business Activity Tax and the Hotel Occupancy Tax, any action in a court or by seizure for collection of taxes imposed by the Code must be commenced within four years of the date of assessment, except as provided in Subsection (D). Any action in a court or by levy for collection of taxes imposed by the Business Activity Tax and the Hotel Occupancy Tax must be commenced within six years of the date of assessment, except as provided in Subsection (D).

D. Exceptions to the statute of limitations on collection:

1. The running of the period of limitations on collection is suspended during any period the Office of the Navajo Tax Commission is prohibited by any court from commencing collection proceedings and during any period of appeal under § 131.

2. The running of the period of limitations on collections may be suspended for any period agreed upon between the taxpayer and the Office of the Navajo Tax Commission.

History

CD-66-06, December 22, 2006.

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

Revision Note. Partially reworded for clarity.

§ 130. Procedure for refunds

Any taxpayer believing it has made an overpayment of taxes may file a written claim for refund with the Office of the Navajo Tax Commission. These refund claims must be filed within one year after the alleged overpayment was made. The procedure for refund claims shall be established in regulations.

History

CJY-52-95, July 20, 1995.

§ 131. Procedure for appeal

A. Appeals from assessments, denials of refund, or other adverse action shall be made first to the Office of the Navajo Tax Commission according to procedures established in regulations; these procedures shall also apply to any challenges to the validity of the Code. The Commission may permit or require one or more levels of review by the Office of the Navajo Tax Commission or its designees and may provide for hearings before the Commission as a body. The failure to duly proceed to a next required level of review under this Subsection shall constitute a waiver of any further appeal pursuant to this Subsection or Subsection (B).

B. Appeals from final actions of the highest level of administrative review shall be made only to the Supreme Court of the Navajo Nation, according to procedures established in regulations, but 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.

C. Actions before the Supreme Court:

1. Review of administrative actions in the Supreme Court shall be on the record and not *de novo*, and shall be limited to the determination whether the administrative action 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. However, where affirmation of an administrative action taken pursuant to § 116 would suspend a right of an appellant to engage in productive activity within the Navajo Nation, the appellant shall on request be entitled to a hearing *de novo* on any material question of fact.

2. The Supreme Court shall be empowered to affirm, reverse, or modify any administrative action, or to remand the matter for further action.

D. Procedures for staying the payment of taxes which are being appealed under Subsection (A) of this Section may be established in regulations. The Office of the Navajo Tax Commission in its discretion may condition the grant of a stay on the posting of a bond or provision of other security.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

Annotations

1. Due process

" ... [T]he statutory 'pay first, litigate later' requirement satisfies Blaze's due process rights. Blaze was on notice of its obligation to pay the taxes, penalties and interest that were eventually assessed against it. [....] Further, we note that although due process does not require the Navajo Nation to provide predeprivation process, taxpayers are afforded an informal conference and a full hearing before the Tax Commission prior to paying their tax liabilities." *Blaze Construction, Inc. v. Navajo Tax Commission*, 7 Nav. R. 435, 438 (Nav. Sup. Ct. 1999).

"24 N.T.C. § 234(b) does not empower the Supreme Court with original jurisdiction to issue injunctions. Neither can the Supreme Court properly use 24 N.T.C. § 234(b) to invoke its supervisory authority over lower courts. An appeal to the Supreme Court of a final Tax Commission decision is the only remedy available under 24 N.T.C. § 234(b)." *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 101 (Nav. Sup. Ct. 1986).

§ 132. Abatement authority

A. In response to a written request for abatement, or when an assessment is found to be incorrect, the Office of the Navajo Tax 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 Office of the Navajo Tax Commission shall abate the appropriate amount of the assessment.

History

CD-66-06, December 22, 2006. Deleted subsection (C).

CJY-52-95, July 20, 1995.

§ 133. Closing agreements

A. If in good faith the Office of the Navajo Tax Commission at any time is in doubt of the taxpayer's liability, it may enter into a written closing agreement with the taxpayer that adequately protects the interests of the Navajo Nation, provided that such agreement shall be subject to approval by the Attorney General of the Navajo Nation.

B. If entered into after an appeal has been filed pursuant to § 131, 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 Office of

the Navajo Tax 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 nonliability for payment of taxes relating to the periods referred to in the agreement only, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

§ 134. Confidentiality rules

A. Nothing in this Section is intended to prevent the publication or disclosure of the names and addresses of registered taxpayers or general information which is otherwise in the public record or generally available to the public upon the making of reasonable inquiry.

B. It shall be unlawful for any employee or former employee of the Office of the Navajo Tax Commission to reveal to any person, other than another employee or legal counsel for the Office of the Navajo Tax Commission, any information contained in the return of any taxpayer or any other information about any taxpayer acquired as a result of his or her employment by the Office of the Navajo Tax Commission, except:

1. Where the taxpayer has given detailed consent in writing to the release of specific information;

2. To an authorized representative of the taxpayer;

3. To an employee of the government of the Navajo Nation for use in connection with the governmental function of said employee, provided that it shall be unlawful for the Navajo Nation employee to reveal said information except as permitted in this Section;

4. To an authorized representative of another Indian nation or a state, provided that the receiving nation or state has entered into a written agreement with the Office of the Navajo Tax Commission to use the information for tax purposes only and that the receiving nation or state has enacted a confidentiality statute similar to this section;

5. To an authorized representative of a federal agency, pursuant to the terms of a reciprocal agreement for the exchange of such information;

6. To the taxpayer, in any administrative or judicial proceeding in which that taxpayer has put its own liability for compliance with the Navajo tax laws in issue, as to all information directly reflecting, referring, or relating to that taxpayer that is not otherwise privileged;

7. In compliance with the order of a hearing officer of competent jurisdiction or any court of competent jurisdiction in which the

information sought is material to the inquiry;

8. In recording tax liens on the property of a taxpayer or collecting taxes by levy upon the property or rights to property of a taxpayer;

9. In statistical releases not identifying the information provided as applicable to any single taxpayer;

10. To the extent of revealing whether a taxpayer 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

11. To the extent of revealing to the purchaser or intended purchaser of a taxpayer or the property thereof the amount and basis of any unpaid taxes for which the seller is liable.

C. For purposes of this Section, "employee of the Office of the Navajo Tax Commission" shall include members of the Navajo Tax Commission and any person for whose services the Office of the Navajo Tax Commission has contracted, provided that such person shall agree in the contract for services to abide by the provisions of this Section.

D. Any Navajo Nation employee or former employee who violates any of the provisions of this Section shall be subject to a civil fine not to exceed five hundred dollars (\$500.00). The District Courts of the Navajo Nation shall have jurisdiction to hear cases arising under this Section, which may only be brought by the taxpayer harmed by the violation of this Section.

E. The Office of the Navajo Tax Commission may in its discretion further restrict the disclosure of information, and such restriction shall be considered an adverse action for purposes of § 131.

History

CD-66-06, December 22, 2006. Deleted previous subsection (B)(1) and renumbered subsequent subsections; also amended subsection (C).

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

§ 135. Notice

The Office of the Navajo Tax Commission may give notice to a taxpayer by mailing the notice to the individual last designated by the taxpayer, at the address shown on the designation. Where a taxpayer has not designated an individual, notice may be given by mailing the notice to the last known address of the taxpayer, or by mailing the notice to a person who is lessee, permittee, or assignee of the affected property, or to a person holding a permit or license for the conduct of the taxable activity. The use of other methods of providing notice, including publication, may be made so long as the method comports with due process.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

§ 136. Investigative authority

A. For the purpose of enforcing the provisions of the Code, the Office of the Navajo Tax Commission is authorized to inspect property, to examine and require the production of any pertinent records, books, information, evidence, or financial data, 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 proceeding.

B. As a means for accomplishing the foregoing, the Office of the Navajo Tax Commission is hereby vested with the power to issue subpoenas and summonses, pursuant to regulations.

C. The Courts of the Navajo Nation shall have the power to enforce administrative subpoenas and summonses issued by the Office of the Navajo Tax Commission.

History

CJY-52-95, July 20, 1995.

§ 137. Oaths and affirmations

Any agent or employee designated by the Office of the Navajo Tax Commission for that purpose is authorized to administer such oaths or affirmations and to certify to such documents as may be necessary under the Code or the regulations.

History

CJY-52-95, July 20, 1995.

§ 138. Receipts; disbursements

A. There is hereby created in the treasury of the government of the Navajo Nation the Tax Administration Suspense Fund.

B. Except as otherwise provided in the Hotel Occupancy Tax, all money received by the Office of the Navajo Tax Commission as taxes shall be deposited forthwith to the credit of said Fund.

C. Payment of claims for refund shall be disbursed 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 transferred

to the general fund or to such other funds or the credit of such accounts, as may be provided by Navajo Nation law.

E. Notwithstanding the foregoing, the Commission may in its discretion hold certain contested amounts in escrow, or direct some balance or a percentage of receipts to be maintained in the Tax Administration Suspense Fund from month-to-month in anticipation of disbursements which may have to be made therefrom.

F. Balances maintained pursuant to Subsection (E) may only be reappropriated by a two-thirds (2/3) vote of the full Navajo Nation Council.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

Revision Note. Slightly reworded for clarity.

§ 139. Severability

If any provision of this Code, 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 Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

History

CJY-52-95, July 20, 1995.

§ 140. Effective date

This Chapter shall take effect upon approval by the Navajo Nation Council and in accordance with 2 N.N.C. § 1005.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

§ 141. Repeals

All laws or parts of laws 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.

History

CJY-52-95, July 20, 1995.

Chapter 3. Possessory Interest Tax

History

Effective date of 1984 revision of Chapter 3. CO-53-84, § 2, October 24, 1984, states as follows: "The Amendments shall take effect upon approval by the Navajo Nation Council for all assessment dates on or after January 01, 1978; provided, that any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any assessment date before January 01, 1985, and further provided, that a lien for assessment dates prior to January 01, 1985, shall not arise except as provided in § 224(a)."

Note. See also 24 N.N.C. § 244.

§ 201. Short title

The tax imposed by this Chapter shall be called the "Possessory Interest Tax."

History

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

Revision note. "Tribe" and "Tribal" changed to "Nation" throughout this Chapter pursuant to 1 N.N.C. § 301.

§ 202. Tax imposed

A. A tax is hereby imposed on possessory interests within the Navajo Nation at the rate established under § 206.

B. The tax assessed under this Chapter is computed by multiplying the taxable value of a possessory interest on the assessment date by the tax rate.

C. All possessory interests shall be uniformly classified into only one of the five possessory interest classifications, § 204 (I) to (M), to determine the taxable value.

History

CO-76-00, October 20, 2000.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

Annotations

1. Construction with other laws

Unilateral imposition by Navajo Nation of possessory interest tax (PIT), which applied to mining activity on Navajo Partitioned Lands within former Joint Use Area, did not violate Navajo-Hopi Land Settlement Act, notwithstanding provision for joint management of subsurface mineral estate by Navajo Nation and Hopi Tribe; PIT did not require Hopi approval as Navajo Nation acted under its governmental authority in imposing tax, which did not constitute management of subsurface mineral estate, and Hopi Tribe's management interest in coal did not constitute governmental interest. *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457, (9th Cir.(Ariz.) 1996).

2. Prior approval

Possessory interest tax (PIT) imposed by Navajo Nation, which affected coal mining activity on lands partitioned to Navajo pursuant to Navajo-Hopi Land Settlement Act, did not require approval of Secretary of Interior, which was mandated only when "otherwise required by law," as PIT was not a contract or agreement which would have required such approval. *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457 (9th Cir.(Ariz.) 1996).

§ 203. Administration

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

History

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

Annotations

1. Approval of taxes

It was not necessary that Secretary of the Interior approve taxes imposed by an Indian tribe on the value of leasehold interests in tribal lands and on receipts from sale of property produced or extracted for the sale of services within those lands. *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195, 105 S.Ct. 1900, 85 L.Ed.2d 200, (U.S.Ariz.1985).

§ 204. Definitions

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

A. "Possessory interest" means the property rights under a lease approved, consented to, or granted by the Navajo Nation, including the rights to the lease premises and underlying natural resources.

B. "Assessment date" means each January 1st.

C. "Lease" means any agreement conferring rights to use or possess tribal lands or to sever products therefrom, including, but not limited to, a lease, right-of-way, use permit, or a joint venture or operating agreement.

D. "Owner" means any person who owns an interest in a lease, or part thereof, as grantee, lessee, permittee, assignee, sublessee, or transferee, whether of the whole interest or less than the whole. In the case of parties to a joint venture or operating agreement, owners and their interests shall be determined under regulations.

E. "Tertiary recovery project" means an enhanced recovery project by the following means:

1. Alkaline or caustic flooding—an augmented water flooding technique where the water is made chemically basic by the addition of alkali metals;

2. Conventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam into injection wells to effect oil displacement toward production wells. This method may include the supplemental injection of water, solvents, or other fluids;

3. Cyclic steam injection—the alternating injection of at least fifty percent (50%) quality steam and production of oil with condensed steam from the same well or wells;

4. Immiscible gas displacement—the injection of non-hydrocarbon gas into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;

5. In situ combustion—the combustion of oil in the reservoir sustained by continuous air injection, to displace unburned oil toward producing wells—provided it continues until at least fifteen percent (15%) of reservoir volume has been served or is burned;

6. Microemulsion flooding—an augmented water flooding technique in which a "surfactant" system is injected to enhance oil displacement toward producing wells;

7. Miscible fluid displacement—an oil displacement process in which fluid is injected into an oil reservoir at pressure levels such that the injected fluid and reservoir oil are miscible. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;

8. Polymer augmented waterflooding—an augmented waterflooding technique in which polymers are injected with the water to improve areal and vertical sweep efficiency;

9. Unconventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam to effect oil displacement toward producing wells. This method may include the supplemental

injection of water, solvents, or other fluids and applies only to steam drive projects with an average depth greater than 25,000 feet or which recover oil with a gravity less than 10° API;

F. "Expanded tertiary recovery project" or "expansion" means the addition of injection and producing wells, the change of injection pattern, or other operating changes to an existing tertiary recovery project that will result in the recovery of oil that would not otherwise be recovered;

G. "Incremental production value" means (1) the value of the oil that could be produced by a tertiary recovery project in excess of the base production value established under conditions before production under the tertiary recovery project; or (2) the value of the oil that could be produced by an expanded tertiary recovery project in excess of the base production value established under conditions before production under the expanded tertiary recovery project;

H. "Base production value" means (1) the value of the oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the tertiary recovery project being certified by the Office of the Navajo Tax Commission; or (2) the value of the oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the expanded tertiary recovery project being certified by the Office of the Navajo Tax Commission.

I. "Class one possessory interest" means any lease used to extract, sever, transport or process coal, oil, gas, minerals, and other natural resources.

J. "Class two possessory interest" means any lease used for the generation of electricity, or used for the transportation of electricity upon lines greater than 14.5 kV.

K. "Class three possessory interest" means any lease used for commercial, industrial, manufacturing, assembling or fabricating purposes.

L. "Class four possessory interest" means any lease used for residential purposes.

M. "Class five possessory interest" means any lease used for other purposes.

History

CO-76-00, October 20, 2000.

CJA-6-96, January 19, 1996.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

Annotations

1. Proceeds

Possessory interest tax (PIT) constituted "proceeds" derived from coal underlying former Joint Use Area, which Navajo Nation thus had to share with Hopi Tribe pursuant to Navajo-Hopi Land Settlement Act, even though Navajo excluded one-half of value of leasehold from PIT in attempt to divide otherwise "undivided" interest in coal, as PIT was tax on rights to "underlying natural resources" granted under lease to mining company and was thus a benefit derived from coal in which Hopi interest was "joint, undivided, and equal" with that of Navajo. *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457 (9th Cir.(Ariz.) 1996).

§ 205. Valuation

A. The value of a possessory interest shall be determined as provided in this Section, or by any method adopted by the Office of the Navajo Tax Commission which accurately reflects fair market value. Provided, that the value of a possessory interest shall exclude the value of leasehold improvements.

B. Fair market value method: The value of a possessory interest may be determined on the basis of the selling prices of comparable leases (whether within or without the Navajo Nation) which are sold by willing sellers to willing buyers, neither of whom are under a compulsion to act.

C. Present value of income method: The value of a possessory interest may be determined by computing the capitalized value of the gross income to be received from the lease less the reasonable expenses to be incurred in producing the income. The allowable expenses shall be set forth in regulations. Such capitalization shall be done for the remaining life of the lease. If the lease term is indefinite, for the purpose of this method, the life of the lease shall be presumed to be 25 years.

D. The Office of the Navajo Tax Commission may engage private appraisal firms for the valuation of possessory interests and determination of valuation factors.

History

CO-76-00, October 20, 2000.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 206. Rate of tax

The tax rate shall be established in regulations. The rate shall not be less than one percent (1%), or more than ten percent (10%). Until another rate is established, the tax rate is three percent (3%). A change in the rate must be announced by July 1st following the assessment date for which it is effective.

History

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 207. Assessment

A. Possessory interests shall be assessed annually as of the assessment date.

B. Taxes assessed shall be a lien against the lease and any leasehold improvements in favor of the Navajo Nation. Such lien shall arise as of the assessment date, without notice or demand, and shall be prior and superior to all other liens and encumbrances upon the property.

C. Owners of possessory interests shall be liable for the taxes assessed.

History

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 208. Exemptions

A. No possessory interest with a taxable value of less than one hundred thousand dollars (\$100,000) shall be subject to this tax. Provided, however, that all possessory interests of a person who owns interests in more than one lease, and of related persons, shall be combined to determine the eligibility of said possessory interests for this exemption.

B. 1. The portion of the possessory interest value attributable to a tertiary recovery project (certified after 1/1/96) or the portion of the possessory interest value attributable to an expanded tertiary recovery project (certified after 1/1/96) shall be exempt from the Possessory Interest Tax from the date the application is received subject to the following:

a. The operator must file an application with the Office of the Navajo Tax Commission for certification of a tertiary recovery project or an expanded tertiary recovery project. At the time the application is filed, the operator must file its projection of base production value for validation and approval by the Office of the Navajo Tax Commission. The Office of the Navajo Tax Commission will review the application and make a determination if the project qualifies as a tertiary recovery project or an expanded tertiary recovery project. The Office of the Navajo Tax Commission will certify or reject the project in writing to the operator in a reasonable timely manner.

b. Disapproval of the base production value or rejection of the project shall constitute an adverse action appealable pursuant to § 131 of the Uniform Tax Administration Statute.

2. The exemption granted under § 208(B)(1) shall be limited as follows: the value associated with the exemption shall not exceed three-fourths of the total value. The Possessory Interest Tax shall be applied to the greater of the following: the base production value or twenty-five percent (25%) of the total value, including the value associated with the incremental production.

3. The exemption granted by this Subsection shall be separate from and in addition to any exemptions granted under other chapters of Title 24.

History

CO-76-00, October 20, 2000.

CJA-6-96, January 19, 1996.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 209. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 210. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 211. Filing of declaration

A. Each owner must file a declaration of its interest in any lease on or before April 1st following each assessment date, or in accordance with regulations. The Office of the Navajo Tax Commission may by form or regulation require the information and documents which it deems necessary for proper and efficient administration of the tax and require that the declaration be signed

by specified persons.

B. If an owner fails to provide information or documents within its possession or control which are relevant to a determination of the value of a possessory interest and which it is required to provide under this Chapter, the Office of the Navajo Tax Commission may proceed to determine the value and to assess the taxes. This assessment is binding on the owner unless it is shown that the valuation, on the basis of the best information available to the Office of the Navajo Commission, was clearly erroneous or unless the Office of the Navajo Tax Commission for other good cause shown relieves the owner from the operation of this Subsection.

History

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 212. Payment of tax

A. The tax shall be paid in two installments, one-half being due by November 1st of each year and the other one-half being due by May 1st of the following year. Provided, that no payment of tax shall be due less than three months after the time an assessment is made and notice thereof given and that the Commission shall extend the time for payment accordingly.

B. In the case of an oil and gas lease, an operator who has a right to receive monetary payments for products severed for other than its own interest may be required to make payments of tax to the Office of the Navajo Tax Commission on behalf of an owner, and shall credit such amounts paid against monetary payments due to the owner and provide the owner with a statement of the tax paid.

History

CO-76-00, October 20, 2000.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 213. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 214. Record keeping

Records required to be kept must be preserved for four years beyond the time payment of tax is made, or if no payment is due, for four years beyond the due date of the declaration to which the records relate.

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 215. Class one possessory interest

The taxable value of a Class one possessory interest shall be one hundred percent (100%) of its value.

History

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 216. Class two possessory interest

The taxable value of a Class two possessory interest shall be one hundred percent (100%) of its value.

History

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 217. Class three possessory interest

The taxable value of a Class three possessory interest shall be ten percent (10%) of its value.

History

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978

§ 218. Class four possessory interest

The taxable value of a Class four possessory interest shall be ten percent (10%) of its value.

History

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 219. Class five possessory interest

The taxable value of a Class five possessory interest shall be ten percent (10%) of its value.

History

CO-76-00, October 20, 2000.

CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§§ 220 to 242. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

§ 243. 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.

History

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978

§ 244. Effective date

This Chapter shall become effective in accordance with Title 2 of the Navajo Nation Code.

History

CO-76-00, October 20, 2000.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

Note. Effective date of 1984 revision of Chapter 3. CO-53-84, § 2, October 24, 1984, states as follows: "The Amendments shall take effect upon approval by the Navajo Nation Council for all assessment dates on or after January 01, 1978; provided, that any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any assessment date before January 01, 1985, and further provided, that a lien for assessment dates prior to January 01, 1985, shall not arise except as provided in § 224(a)."

Effective date and application of revisions by CO-79-85, October 31, 1985.

§ 245. 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 rights of taxation by the Navajo Nation.

History

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978

Chapter 4. Oil and Gas Severance Tax

§ 301. Short title

The tax imposed by this Chapter shall be called the "Oil and Gas Severance Tax."

History

CO-79-85, October 31, 1985.

§ 302. Tax imposed

A tax is hereby imposed on the severance of products within the Navajo Nation at the rate established under § 306. The tax due for a period is computed by multiplying the value of products severed and sold during the period by the tax rate.

History

CO-79-85, October 31, 1985.

§ 303. Administration

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

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

§ 304. Definitions

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

A. "Severance" means severing, producing, or taking from the soil in any manner whatsoever.

B. "Products" means oil, natural gas, or other liquid hydrocarbons, individually or any combination thereof.

C. "Value" means the actual price received for the products at the production unit, or the value which is determined under § 305.

D. "Production unit" means a unit of property which is designated and identified under § 305(C).

E. "Interest" means an entire or fractional interest of any kind or nature in products at the time of severance from a production unit.

F. "Operator" means any person engaged in severing products from a production unit, or who owns an interest and receives all or a portion of the products for its interest.

G. "Owner" means any person who owns an interest, or who has a right to a monetary payment which is determined by the value of products.

H. "Purchaser" means any person who is the first purchaser of products after severance from a production unit.

I. "Period" means a calendar month.

J. "Tertiary recovery project" means an enhanced recovery project by the following means:

1. Alkaline or caustic flooding—an augmented water flooding technique where the water is made chemically basic by the addition of alkali metals;

2. Conventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam in to injection wells to effect oil displacement toward production wells. This method may include the supplemental injection of water, solvents, or other fluids;

3. Cyclic steam injection—the alternating injection of at least fifty percent (50%) quality steam and production of oil with condensed steam from the same well or wells;

4. Immiscible gas displacement—the injection of non-hydrocarbon gas into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;

5. In situ combustion—the combustion of oil in the reservoir sustained by continuous air injection, to displace unburned oil toward producing wells—provided it continues until at least fifteen percent (15%) of reservoir volume has been served or is burned;

6. Microemulsion flooding—an augmented water flooding technique in which a "surfactant" system is injected to enhance oil displacement toward producing wells;

7. Miscible fluid displacement—an oil displacement process in which fluid is injected into an oil reservoir at pressure levels such that the injected fluid and reservoir oil are miscible. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;

8. Polymer augmented waterflooding—an augmented waterflooding technique in which polymers are injected with the water to improve areal and vertical sweep efficiency;

9. Unconventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam to effect oil displacement toward producing wells. This method may include the supplemental injection of water, solvents, or other fluids and applies only to steam drive projects with an average depth greater than 25,000 feet or which recover oil with a gravity less than 10° API;

K. "Expanded tertiary recovery project" or "expansion" means the addition of injection and producing wells, the change of injection pattern, or other operating changes to an existing tertiary recovery project that will result in the recovery of oil that would not otherwise be recovered;

L. "Incremental oil production" means the volume of oil produced by a tertiary recovery project or an expanded tertiary recovery project in excess of the base production established under conditions before production under the tertiary recovery project or expanded tertiary recovery project;

M. "Base production" means (1) the amount of oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the tertiary recovery project being certified by the Office of the Navajo Tax Commission; or (2) the amount of oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the expanded tertiary recovery project being certified by the Office of the Navajo Tax Commission.

History

CJA-7-96, January 19, 1996.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

§ 305. Value and unit

A. The Commission may determine the value of products severed from production unit when: The operator and purchaser are affiliated or related persons; or, the sale and purchase of products is not an arm's length transaction; or, products are severed and removed from a production unit and a price is not established for such products.

B. The value determined by the Commission shall be commensurate with the actual price received for products of like quality, character, and use which are severed in the same field or area. If there are no sales of products of like quality, character, or use severed in the same field or area, then the Commission shall establish a reasonable value based upon the best information available.

C. The Commission shall designate the property that will constitute a production unit and assign to each production unit a number or symbol, which shall serve as identification for the purposes of reporting the severance of products and paying taxes. The Commission shall inform the operators of production units as to the designations made and identification so assigned.

If the Commission fails to designate production units and assign numbers, taxpayers are in no way relieved from the liability imposed by this Chapter and the operator shall request that such designations and assignments be made.

History

CO-79-85, October 31, 1985.

§ 306. Rate of tax

The tax rate shall be established in regulations. The rate shall not be less than three percent (3%) or more than eight percent (8%). Until another rate is established, the rate is four percent (4%). A change in the tax rate must be announced at least three full periods before its scheduled effective date.

History

CO-79-85, October 31, 1985.

§ 307. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

§ 308. Exemptions

A. Nothing in this Chapter shall be construed as imposing a tax on actual royalty payments made to the Navajo Nation government or the federal government.

B. The incremental oil production from a tertiary recovery project (certified after January 1, 1996) and the incremental oil production from an expanded tertiary recovery project (certified after January 1, 1996) shall be exempt from the Oil and Gas Severance Tax from the date the application is received subject to the following:

1. The operator must file an application with the Office of the Navajo Tax Commission for certification of a tertiary recovery project or an expanded tertiary recovery project. At the time the application is filed, the operator must file its projection of base production for validation and approval by the Office of the Navajo Tax Commission. The Office of the Navajo Tax Commission will review the application and make a determination if the project qualifies as a tertiary recovery project or an expanded tertiary recovery project. The Office of the Navajo Tax Commission will certify or reject the project in writing to the operator in a reasonable timely manner.

2. Disapproval of the base production or rejection of the project shall constitute an adverse action appealable pursuant to 24 N.N.C. § 131.

3. If the tertiary recovery project or expanded tertiary recovery project is certified by the Office of the Navajo Tax Commission pursuant to the provisions of § 308(B)(1), the taxpayer may claim exemption for the incremental oil production from the date the application is received. Any Navajo severance tax paid on the incremental oil production during the period from the date the application is received to the date of certification shall be creditable against Navajo severance tax for subsequent periods.

4. The exemption granted by this Subsection shall be separate from and in addition to any exemptions granted under other chapters of Title 24.

History

CJA-7-96, January 19, 1996.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

§ 309. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

§ 310. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

§ 311. Filing of reports

A. Taxpayers must file reports of the severance or purchase of products and the tax due, or withheld and remitted, for the period, by the fifteenth day of the second month after the end of each calendar month, in accordance with Subsections (B), (C), and (D) of this Section. The Commission may by form or regulation require that information and relevant documents which it deems necessary for the proper and efficient administration of the tax be included in or with reports, and that reports be signed by specified persons.

B. Each purchaser shall include in its report the total value, volume, and kind of products purchased during the period, by production unit, and any tax withheld from payments. Provided that, under an agreement with an operator to which the Commission consents, a purchaser may be relieved of an obligation to report purchases.

C. Each operator shall include in its report the name of the property and the total value, volume, and kind of products severed and sold, by production unit, the identity of each owner and any tax withheld therefrom. For products severed and taken-in-kind other than for itself, the operator's report need not include the value of the products taken.

D. An owner whose interest in products severed is reported under Subsections (B) or (C) of this Section is not required to file a report. Provided that, where an operator or purchaser has not reported or not included in a report, any part of the value, volume, and kind of products severed and sold or taken with respect to an owner, such owner shall be required to file a report as to its interest, in accordance with this Chapter and the regulations.

E. The Commission may by form or regulation require information reports to be filed by any person it deems necessary for the proper and efficient administration of the tax.

History

CO-79-85, October 31, 1985.

§ 312. Withholding and payment of tax

A. A purchaser making a monetary payment to an owner or an operator for an owner's portion of the value of products purchased shall withhold from such payment the amount of tax due from the owner. Provided that, under an agreement with an operator to which the Commission consents, a purchaser may be relieved of an obligation to withhold tax from payments.

B. An operator making a monetary payment to an owner for the owner's portion of the value of products severed and sold shall withhold from such payment the amount of tax due from the owner. Provided that, if a purchaser has withheld the tax, an operator shall not also withhold.

C. Payment of tax is due at the time a report is due. In addition to the tax due for itself as an owner, a taxpayer must remit to the Commission in full any and all amounts which, as an operator or purchaser, it has withheld from owners.

D. An operator or purchaser who withholds the tax and remits it, pursuant to subsections (A), (B), and (C) of this Section, shall credit such amounts against the monetary payment to the owner and shall, in a reasonable time and manner, provide the owner with a statement of the tax withheld.

E. An owner whose tax has been withheld and remitted pursuant to Subsections (A), (B), and (C) of this Section is relieved from liability for the amount withheld. Provided, that where any part of the tax due from an owner of products severed has not been so withheld, or has been withheld and not remitted, such owner shall remain liable for the unpaid tax and must make payment in accordance with this Chapter and the regulations. Further provided, that an owner shall have a cause of action in any court of competent jurisdiction to recover from the operator or purchaser amounts withheld as tax, but not remitted to the Commission.

History

CO-79-85, October 31, 1985.

§ 313. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

§ 314. Record keeping

Records required to be kept must be preserved for four years beyond the time payment of tax is made, or if no payment is due, for four years beyond the end of the period to which the records relate.

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

§§ 315 to 340. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

§ 341. Relief from Business Activity Tax

A. For any period beginning on or after October 1, 1985, the gross receipts from the sale of products, including those products exempt under § 308(A), shall be excluded from source gains of a branch for the purpose of the Business Activity Tax, 24 N.N.C. §§ 401-445.

B. For any period beginning prior to October 1, 1985, if products are assessed and the tax paid pursuant to this Chapter, then the gross receipts from the sale of such products, including those products exempt under § 308(A), shall be excluded from source-gains of a branch for the purpose of the Business Activity Tax.

C. In any case, that the severance tax must be paid to the Commission in order for any exclusion to apply or be finally effective, and no such exclusion shall apply or be finally effective until the tax determined under this Chapter has been paid to the Commission.

D. For the purpose of § 411(F) of the Business Activity Tax, the proper filing of severance tax reports shall constitute a claim of the exclusions provided in this Section.

History

CO-79-85, October 31, 1985.

§ 342. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

§ 343. Severability

If any provision of this Chapter, 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.

History

CO-79-85, October 31, 1985.

§ 344. Effective date

This Chapter shall take effect upon approval by the Navajo Nation Council. The tax imposed hereunder shall be due and payable for periods beginning on or after October 1, 1985, and for the purposes of § 341, may be applied for periods beginning prior to October 1, 1985.

History

CO-79-85, October 31, 1985.

§ 345. 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.

History

CO-79-85, October 31, 1985.

Chapter 5. Business Activity Tax

History

Effective date and application of 1984 revision of Chapter 5. CS-47-84, § 2, September 20, 1984, states as follows: "This resolution shall take effect upon approval by the Navajo Tribal Council for all calendar quarters, beginning on

or, after July 1, 1978; provided, that any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any quarter beginning before October 1, 1984."

§ 401. Short title

The tax imposed by this Chapter shall be called the "Business Activity Tax."

History

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

§ 402. Tax imposed

A tax is hereby imposed on the source-gains of a branch at the rate established under § 406. The tax due for a period is computed by multiplying the source-gains of the branch for the period by the tax rate.

History

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

Effective date and application of revisions to this Chapter; see 24 N.N.C. § 444 and notes.

Annotations

1. Construction and application

"The statutory language in 24 N.T.C. § 402, as defined in section 404, plainly includes the taxing of Navajo Communications." *Navajo Communications Company v. Navajo Tax Commission*, 6 Nav. R. 366, 374 (Nav. Sup. Ct. 1991).

§ 403. Administration

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

History

CJY-52-95, July 20, 1995.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

Effective date and application of revisions to this Chapter see notes under 24 N.N.C. § 444.

§ 404. Definitions

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

A. "Branch" means any person engaged in trade, commerce, manufacture, power production, or any other productive activity, whether for profit or not, wholly or in part within the Navajo Nation.

B. "Source-gains" of a branch are the gross receipts of that branch from the sale, either within or without the Navajo Nation, of Navajo goods, or services, as those terms are defined in Paragraphs (C) and (D) of this Section, minus the deductions allowable under § 405.

C. "Navajo goods" are all personal property produced, processed, or extracted within the Navajo Nation, including coal, oil, uranium, gas, and other natural resources and electrical power.

D. "Services" are all services performed within the Navajo Nation, including the transport or transmission by whatever means of coal, oil, uranium, gas, other natural resources and electrical power.

E. "Sale."

1. General rule: A "sale" consists of a transfer of ownership between buyer and seller for a consideration.

2. Intra-branch rule: A "sale" also consists of the delivery of Navajo goods, or the performance of services, by a branch, for the use or benefit of any person of which the branch is a part.

F. "Gross receipts" of a branch means and are to be determined according to the following rules.

1. General rule: Except as provided in Paragraphs (2) and (3) below, the "gross receipts" of a branch are the amount of money or the fair market value of property and services received by the branch on the sale of Navajo goods or services.

2. Sales without the Navajo Nation: For sales without the Navajo Nation, "gross receipts" are determined by the value of the Navajo goods and services at the time and place said goods and services are transported outside the Navajo Nation.

3. Sales among related persons: On the sale of Navajo goods and services by a branch to a related person, "gross receipts" are the fair market value of the Navajo goods or services sold.

4. Estimate of fair market value: When practical, fair market value is to be determined on the basis of consideration paid in

comparable transactions, but if such information is not available, the estimate of fair market value will be made according to regulations.

G. "Period" means a calendar quarter.

H. "New business" means a manufacturer or processor that occupies a new business facility or a grower that commences operation in the Navajo Nation on or after January 1, 1999.

I. "New business facility" means a facility in the Navajo Nation that satisfies the following requirements:

1. The facility is used by the taxpayer in the operation of a revenue-producing business. The facility shall not be considered a "new business facility" if the taxpayer's only activity with respect to the facility is to lease it to another person;

2. The facility is acquired by or leased to the taxpayer on or after July 1, 1998. The facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer, or the commencement of the term of the lease to the taxpayer occurs on or after that date, or if the facility is constructed, erected, or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;

3. The facility is a newly acquired facility in which the taxpayer is not continuing the operation of the same or a substantially identical revenue-producing business that previously was in operation in the Navajo Nation; a facility is a "newly acquired facility" if the facility was acquired or leased by the taxpayer from another person even if the facility was used in a revenue-producing business in the Navajo Nation immediately prior to the transfer of the title to the facility to the taxpayer or immediately prior to the commencement of the term of the lease of the facility to the taxpayer by another person, provided that the revenue-producing business of the previous occupant was not the same or substantially identical to the taxpayer's revenue-producing business; and

4. The facility is not a replacement business facility for a business facility that existed in the Navajo Nation.

History

CO-87-98, October 19, 1998.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

Annotations

1. Construction and application

"The statutory language in 24 N.T.C. § 402, as defined in section 404, plainly includes the taxing of Navajo Communications." *Navajo Communications Company v. Navajo Tax Commission*, 6 Nav. R. 366, 374 (Nav. Sup. Ct. 1991).

§ 405. Deductions

A. In computing source-gains, a branch may deduct from its gross receipts the expenses set forth in Subsection (B) of this Section and the standard deduction set forth in Subsection (C) of this Section.

B. Deductions are allowed for the following expenses paid or accrued during the period in connection with the business activities giving rise to gross receipts includible in source-gains:

1. Salaries and/or other compensation paid to members of the Navajo Nation;
2. Purchases of Navajo goods and services; and
3. Any payment made to the government of the Navajo Nation, except for taxes paid pursuant to this Chapter and any penalties or fines.

C. A standard deduction is allowed equal to ten percent (10%) of the includible gross receipts for the period, or one hundred twenty-five thousand dollars (\$125,000), whichever is greater; except as provided in Subsections (D) and (E).

D. If a person owns or controls more than one branch or there exists more than one branch owned or controlled by related persons, then either all said branches shall be entitled to one one hundred twenty-five thousand dollars (\$125,000) standard deduction collectively, or each branch must take the ten percent (10%) standard deduction.

E. Except that, a branch which is engaged in construction activity as a general contractor shall not, with respect to said construction activity, be allowed the deductions provided in this Section and, in lieu thereof, shall be subject to the reduced rate of tax provided in § 406.

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

§ 406. Rate of tax

The tax rate shall be established in regulations. The rate shall not be less than four percent (4%) or more than eight percent (8%). Until another rate is established, the rate is five percent (5%). A change in the tax rate must be announced at least one full period before its scheduled effective date. Except that, for a branch, which is engaged in construction activity as a general contractor, the tax on the gross receipts from said construction activity shall be computed at sixty percent (60%) of the general rate herein provided.

History

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

§ 407. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

§ 408. Exemptions and exclusions

A. For any period beginning on or after January 1, 2001, a branch may exclude from its gross receipts any amounts on which the Navajo Sales Tax has been paid, provided that no such exclusion shall apply or be finally effective until the Sales tax has been paid to the Office of the Navajo Tax Commission. The proper filing of Navajo Sales Tax reports shall constitute a claim of the exclusions provided in this Section.

B. Nothing in this Chapter shall be construed as imposing a tax on the government of the Navajo Nation or on any wholly owned subdivision or enterprise of the government of the Navajo Nation.

C. Nothing in this Chapter shall be construed as imposing on the Federal government a tax, which is prohibited by Federal law.

D. Nothing in this Chapter shall be construed as imposing a tax on the salary or wages of an individual engaged as an employee.

E. A branch may exclude from its gross receipts any amount received under a subcontract and a certificate of exemption issued from the general contractor, provided that the general contractor is a person wholly exempt

under § 408(A) or is a branch which reports the gross receipts for the entire prime contract and is subject to the exception in § 405(E) and the reduced tax rate provided in § 406. The Commission may by form or regulation provide for proper issuance and filing of certificates of exemption.

F. A branch, which is engaged in retail sales, may exclude from its gross receipts any amount received from the sale of non-Navajo goods at retail within the Navajo Nation.

G. A branch may exclude from its gross receipts any amount derived directly from traditional farming or livestock activities within the Navajo Nation.

H. A branch engaged in manufacturing activities may exclude from its gross receipts the cost of raw materials imported into the Navajo Nation to be used in the process of manufacturing Navajo goods.

History

CO-84-01, October 18, 2001.

CJY-53-95, July 20, 1995.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

§ 409. Credits

A. 1. If on receipts from selling coal severed from Navajo Nation land a qualifying gross receipts, sales, business activity or similar tax has been levied by a state, the amount of state tax paid and not refunded may be credited against any Business Activity Tax due. The amount of the credit shall be equal to the lesser of twenty-five percent (25%) of the tax imposed by the state on the receipts or twenty-five percent (25%) of the Business Activity Tax.

2. A qualifying gross receipts, sales, business activity or similar tax levied by a state shall be limited to a tax that:

a. Is substantially similar to the Business Activity Tax;

b. (1) for the period July 1, 2001 through June 30, 2002, provides a credit against the state tax equal to the lesser of thirty-seven and one-half percent (37 1/2%) of the tax imposed by the state on the receipts or thirty-seven and one-half percent of the Business Activity Tax imposed on the receipts, and (2) after June 30, 2002, provides a credit against the state tax equal to the lesser of seventy-five percent (75%) of the tax imposed by the state on the receipts or seventy-five percent (75%) of the Business Activity Tax

imposed on the receipts;

c. Is not used to calculate an intergovernmental coal severance tax credit with respect to the same receipts for the time period; and

d. Is subject to a cooperative agreement between the Navajo Nation and the state.

B. 1. With respect to the gross receipts of a taxpayer engaged in the transaction of business occurring after January 1, 1999, from a new business in the Navajo Nation, the person who is responsible for the payment of the Business Activity Tax may claim a credit against the Business Activity Tax for the amount of tax paid to a state as corporate income tax, in accordance with this Section.

2. A taxpayer may claim a credit against the Business Activity Tax equal to fifty percent (50%) of the lesser of:

a. The total Business Activity Tax liability of the taxpayer and associated with the activities for which the taxpayer is claiming the credit; or

b. The total state corporate income tax paid by the taxpayer and associated with the activities for which the taxpayer is claiming the credit.

3. For purposes of this section, the total state corporate income tax shall include estimated payments made by the taxpayer and associated with the activities for which the taxpayer is claiming the credit. After the taxpayer has filed the final return for a tax year, the taxpayer may file amended Business Activity Tax returns for the previous four quarters if necessary to accurately reflect the amount of credit to which the taxpayer is entitled.

4. The burden of showing entitlement to a credit authorized by this Section is on the taxpayer claiming the entitlement, and the taxpayer shall furnish to the Office of the Navajo Tax Commission, in the manner determined by the Office of the Navajo Tax Commission, proof of payment of the aggregate amount of tax on which the credit is based.

History

CAU-67-01, August 7, 2001.

CO-87-98, October 19, 1998.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

Revision Note. This Section was renumbered for statutory reform.

§ 410. Designation of individual

No designation need be made until a branch has gross receipts of one hundred twenty-five thousand dollars (\$125,000) or more in any period after the effective date of this Chapter. This exception shall not apply if the branch is one which is described in § 405(D) and one to which the limitations of that subsection will apply.

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

§ 411. Filing of return

A. Except as provided in Subsection (B) of this Section, each branch must file a return of source-gains and the tax due for the period by the fifteenth day of the second month after the end of each calendar quarter. Returns are due on May 15, August 15, November 15, and February 15 of each calendar year. The Commission may by form or regulation require that other information and relevant documents which it deems necessary for the proper and efficient administration of the tax be included with the return, and that the return be signed by specified persons.

B. No return need be filed by a branch for any period in which gross receipts are less than one hundred twenty-five thousand dollars (\$125,000). This exception does not apply if the branch had annualized gross receipts of five hundred thousand dollars (\$500,000) or more in any of the three years preceding the period. Nor does this exception apply if the branch is a general contractor subject to the exception in § 405(E) and the reduced tax rate provided in § 406, or if the branch is a subcontractor described in § 408(D) and for any period to which that Subsection applies.

C. If the branch is one which is described in § 405(D) and one to which the limitation of that Subsection will apply, then for Subsection (B) of this Section to apply, all the related branches must in the aggregate meet both qualifications.

D. If a branch is an association, joint venture, or partnership, or a part thereof, the Commission may require that each associate, participant, or partner whether general or limited, file a separate return in accordance with regulations, provided that the limits under § 405(D) shall apply as though each associate, participant, or partner were owned or controlled by the branch and by each other.

E. No return need be filed by any person who is exempt under § 408(A),

(B), and (C), provided that the Commission may require such person to file the information necessary to establish its exempt status.

F. Exclusions from gross receipts shall be claimed in a return. In the case of the exclusion provided in § 408(D), a proper certificate of exemption shall constitute such a claim.

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

§ 412. Payment of tax

Payment of tax is due at the time the return is due. The Commission, however, may require payment of tax on a monthly basis in appropriate cases.

History

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

§ 413. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

§ 414. Record keeping

Records required to be kept must be preserved for six years beyond the time payment of tax is made, or if no payment is due, for six years beyond the end of the period to which the records relate.

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

§§ 415 to 442. [Reserved]

History

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978

§ 443. 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.

History

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

§ 444. Effective date

This Chapter shall take effect upon approval by the Navajo Nation Council and in accordance with 2 N.N.C. § 1005.

History

CJY-52-95, July 20, 1985.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

Note. (1) Effective date and application of 1984 revision of Chapter 5. CS-47-84, § 2, September 20, 1984, states as follows: "This resolution shall take effect upon approval by the Navajo Tribal Council for all calendar quarters, beginning on or, after July 1, 1978; provided, that any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any quarter beginning before October 1, 1984."

(2) Effective date and application of 1985 revision of this Chapter by CO-79-85, October 31, 1985 is for all periods beginning on or after January 1, 1986.

§ 445. 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.

History

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

Chapter 6. Sales Tax

§ 601. Short title

The tax imposed by this Chapter shall be called the "Sales Tax."

History

CO-84-01, October 18, 2001.

§ 602. Purpose

The Navajo Nation Council hereby enacts this tax for the privilege of engaging in business activity within the Navajo Nation, and for purposes of defraying necessary governmental expenses at the national and local level incurred in providing for the public welfare.

History

CO-84-01, October 18, 2001.

§ 603. Tax imposed

A tax is hereby imposed on the gross receipts of a person. The tax due for a period is determined by first calculating applicable gross receipts for a period, and then multiplying those gross receipts by the applicable tax rate.

History

CO-84-01, October 18, 2001.

§ 604. Legal incidence and responsibility for payment

The person liable for the payment of the tax imposed by this Chapter is the person receiving the gross receipts from a sale.

History

CO-84-01, October 18, 2001.

§ 605. Rate of tax

A. The tax imposed by this Chapter is imposed at a rate of not less than two percent (2%), nor more than six percent (6%), which shall be specifically established by regulations promulgated by the Navajo Tax Commission. Until another rate is established, the rate shall be four percent (4%) of the applicable gross receipts from all retail sales (.04 × applicable gross receipts).

B. A majority of the registered voters of any governance-certified chapter may enact an ordinance imposing an additional tax rate in addition to the rate approved by the Navajo Tax Commission in accordance with paragraph A, above. This additional rate may be from one-quarter of one percent (.25%) to four percent (4%) and shall be set forth in the ordinance.

History

CO-38-09, October 22, 2009. Local Sales Tax Act of 2009. Added subsection B.

CJA-03-07, January 24, 2007. Increased the sales tax rate from 3% to 4%, effective July 1, 2007.

CO-84-01, October 18, 2001.

§ 606. Administration

All provisions of the Uniform Tax Administration Statute apply to this Chapter.

History

CO-84-01, October 18, 2001.

§ 607. Definitions

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

A. "Consideration" means any money or other pecuniary benefit, goods, personal or real property, services, or any combination thereof, which accrues as a right, profit, advantage, or benefit to a person, or which reflects a payment, detriment, loss, or responsibility of a person.

B. "Construction activity" means any building, altering, repairing, installing, or demolishing in the ordinary course of business, whether a project is completed or not, any:

1. Road, highway, bridge, parking area, fence, livestock guard, gate, or related structure;

2. Building, stadium, or other structure;

3. Airport, railway, or similar transportation facility;
4. Park, trail, athletic field, golf course, or similar facility;
5. Dam, reservoir, canal, ditch, culvert, or similar facility;
6. 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;
7. Sewerage, water, coal, coal slurry, gas, or other pipeline;
8. Transmission line;
9. Radio, television, microwave, telephone, or other similar tower;
10. Water, oil, gasoline, fuel or other storage tank;
11. Shaft, tunnel, or other mining appurtenance;
12. Microwave station, or similar facility;
13. Leveling, clearing, or other preparation of land;
14. Excavating of earth;
15. Drilling of wells of any type, including seismograph shot holes or core drilling; or
16. Any similar work or activity.

C. "Employee" means a person in the service of another person under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.

D. "Enterprise" means any non-corporate business entity created by action of the Navajo Nation Council.

E. "Fair market value" means the amount of consideration at which personal or real property or services would change hands via an arms-length transaction between a willing buyer and a willing seller, or a willing lessor and a willing lessee, neither of whom is under any compulsion to act.

"Fair market value" is to be determined on the basis of consideration in comparable sales, leasing, or rental transactions. If such information is not available, the Office of the Navajo Tax Commission may estimate the fair market value of the subject of a transaction according to procedures established by regulations.

F. "General contract" means any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or

unwritten, which is entered into by a general contractor.

G. "General contractor" means a person primarily responsible for the performance of a construction project pursuant to a contract.

A "General contractor" may enter into subcontracts, but remains primarily responsible for the management, planning, supervision, coordination, and performance of the contract.

H. "Gross receipts" means the total amount of money, credit, or any other pecuniary benefit or advantage, plus the fair market value of any other consideration, which is actually received during any period by any person from the sale or leasing of real or personal property of any kind, the sale of services of any kind, and any other productive activity of any kind, whether for profit or not, conducted wholly or partially within the Navajo Nation. "Gross receipts" does not include the salary or wages of an individual engaged as an employee.

"Gross receipts" includes those amounts received for any and all personal or real property which is an integral, but not necessarily a significant or primary, component of the service(s) rendered, regardless of the date, time, manner, and location of sale, delivery, or use of such personal or real property.

"Gross receipts" includes those amounts received for any and all services which are an integral, but not necessarily a significant or primary, component of the sale or delivery of personal or real property, such as those amounts received as payment or reimbursement for costs of putting personal or real property into a finished and marketable form, payment for delivery and set-up, and payment for warranty or service contracts, regardless of the date, time, manner, or location of performance of such service(s).

"Gross receipts" does not include amounts received as reimbursement for federal, state, or Navajo Nation taxes.

I. "Manufacturing activity" means combining or processing components or materials into a finished product, whether manually or mechanically, for the purpose of resale in the ordinary course of business, but does not include construction activity.

J. "Navajo Nation" means all areas within the territorial jurisdiction of the Navajo Nation government.

K. "Performance" means the partial or complete fulfillment or accomplishment of a promise, contract, or other obligation according to the terms of such promise or contract.

L. "Period" means a calendar quarter.

M. "Personal property" means any tangible property which may be seen, touched, weighed or measured, or is in any manner perceptible to the human senses, including, but not limited to, electricity, natural gas, goods or merchandise of any kind, goods purchased for consumption or other use, goods purchased for incorporation into other personal or real property, and goods

purchased for use in the performance of any service, whether or not such goods are consumable, movable, separable, affixed to, or incorporated into, other personal or real property, and whether or not such goods retain their original character upon final sale.

"Personal property" also means any intangible property which cannot be physically perceived by the human senses, such as patents, trademarks, copyrights, franchises, licenses, knowledge, information, ideas, advice, and other intangible items of value or legal rights of any kind.

N. "Sale" means any transaction, including a lease or rental, for consideration of any kind that results in the transfer of ownership and/or possession, delivery, use, or enjoyment of personal or real property, or the performance of any service.

A "Sale" includes circumstances where the title to personal or real property is retained as security for payment, and includes circumstances where no actual physical transfer of personal or real property or services occurs.

O. "Sale for resale" means a sales transaction for purposes of any further sale, processing, manufacturing, or other commercial or industrial purposes, as distinguished from a retail sale.

P. "Services" means manual, mechanical, or intellectual labor performed, and includes other business activity that does not have physical characteristics.

Q. "Subcontract" means any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or unwritten, between a general contractor and a subcontractor.

R. "Subcontractor" means a person who takes from the general contractor a specific part of the work undertaken by the general contractor.

History

CO-84-01, October 18, 2001.

§ 608. Navajo Nation government

A. Sales by corporations owned by the Navajo Nation government or any political subdivision thereof shall be fully subject to the tax imposed by this Chapter.

B. Sales by the government of the Navajo Nation, or political subdivisions or enterprises thereof, shall be subject to the tax imposed by this Chapter according to the following schedule:

1. For all periods during calendar years 2001 and 2002, the Navajo Nation government, political subdivisions, and enterprises shall not be subject to the tax;

2. For all periods during calendar year 2003, the Navajo Nation government, political subdivisions, and enterprises shall be subject to

the tax at a rate equal to twenty-five percent (25%) of the rate imposed under § 605 of this Chapter;

3. For all periods during calendar year 2004, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to fifty percent (50%) of the rate imposed under § 605 of this Chapter;

4. For all periods during calendar year 2005, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to seventy-five percent (75%) of the rate imposed under § 605 of this Chapter;

5. For all periods during calendar year 2006 and all periods thereafter, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to one hundred percent (100%) of the rate imposed under § 605 of this Chapter;

C. In cases where a person is partially owned by the Navajo Nation government or any of its political subdivisions or enterprises, gross receipts shall be prorated if necessary.

History

CO-84-01, October 18, 2001.

§ 609. Exemptions and exclusions

A. Nothing in this Chapter shall be construed as imposing a tax on the gross receipts of a subcontractor, provided that:

1. The general contractor with whom the subcontractor has contracted has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter by signing and issuing a certificate of exemption to the subcontractor; and,

2. The subcontractor must obtain from the general contractor a certificate of exemption issued to the general contractor by the Office of the Navajo Tax Commission. This certificate must be signed by the general contractor, and must indicate that the general contractor has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter.

3. The Commission may by form or regulation provide for the proper issuance and filing of the certificate of exemption.

B. In calculating applicable gross receipts, a person may exclude those gross receipts on which any of the following Navajo Nation taxes have been paid:

1. Navajo Nation Oil and Gas Severance Tax;
2. Navajo Tobacco Products Tax; or

3. Navajo Nation Fuel Excise Tax.

C. The tax imposed by this Chapter does not apply to gross receipts generated directly by the following:

1. Sales for resale;
2. Sales related to agricultural, farming, or livestock activities conducted within the Navajo Nation;
3. Sales, other than sales from an unrelated trade or business as defined in §§ 511-513 of the Internal Revenue Code,¹ by any person operating exclusively for non-profit or charitable purposes, and recognized as such pursuant to § 501(c)(3) and 501(c)(19) of the United States Internal Revenue Code² at the time of sale;
4. Sales by facilities engaged in childcare, foster care or adoption placement, or battered families and homeless shelters;
5. Sales of stocks, private or government-issued bonds, mutual funds, or other investments, including income received as dividends or interest;
6. Sales by itinerant salespersons;
7. Occasional sales by persons who are not regularly engaged in the business of selling personal or real property or services;
8. Sales by educational institutions, including primary and secondary schools, colleges, vocational, and job training programs;
9. Sales by hospitals and health-care organizations or facilities, such as nursing care institutions, residential care and mental health facilities, senior citizen care facilities or retirement homes, kidney dialysis facilities and blood banks, or other facilities which provide medical care and services;
10. Sales from coin-operated vending machines of any type;
11. Sales related to traditional Native American ceremonies or services;
12. Sales of prescription medicines, prosthetic devices, or other medical devices, including medical oxygen, monitoring devices, dentures, hearing aids, crutches, insulin syringes, blood sugar monitoring strips or devices, prescription eyeglasses and contact lenses, or any durable medical equipment primarily and customarily used for medical purposes and not useful in the absence of illness, injury, or other medical condition;
13. Sales related to funerals and human burials;
14. Sales paid for by coupons issued by the United States Department of Agriculture under the Foods Stamp Act of 1977 (P.L. 95-

113);³

15. Sales paid for by vouchers issued under § 17 of the Child Nutrition Act (P.L. 95-627 and P.L. 99-669);⁴

16. Sales of newspapers or other daily publications; or

17. Sales of mobile homes, motor homes, motor vehicles, tractors, and hauling trailers for private use, possession, or enjoyment, provided that such items are not resold or used in any business activity or service.

D. Nothing in this Chapter shall be construed as imposing directly upon the United States a tax which is prohibited by federal law.

E. Through December 31, 2005, a person may exclude from gross receipts any amount received from a transaction on which the Hotel Occupancy Tax has been paid.

History

CO-84-01, October 18, 2001.

§ 610. Credits

A person may take a credit against the tax imposed by this Chapter for taxes paid pursuant to any nondiscriminatory excise tax imposed by any duly established township or local government subunit, provided that revenues from such excise tax are utilized to provide essential governmental services.

History

CO-84-01, October 18, 2001.

§ 611. [Reserved]

§ 612. Filing of return

A. Each person must file a return indicating all sales from applicable gross receipts and the tax due under this Chapter for each period by the fifteenth day of the second month after the end of each calendar quarter. Returns are due on May 15, August 15, November 15, and February 15 of each calendar year.

B. The Commission may by form or regulation require that other information, records or relevant documents which it deems necessary for the proper and efficient administration of this Chapter be included with the return, and that the return be signed by a specified person.

C. No return need be filed by any person who is exempt under § 609, provided that the Office of the Navajo Tax Commission may require such person to file the information necessary to establish its exempt status.

D. In the case of the exemption provided for in § 609(A), the filing by a

person of a proper certificate of exemption with the Office of the Navajo Tax Commission shall constitute a claim for exemption.

History

CO-84-01, October 18, 2001.

§ 613. Payment of tax

Payment in full of the taxes owed for a particular period is due on the same date that the completed return for that same period is due. The Office of the Navajo Tax Commission, however, may require payment of any taxes due on a monthly basis.

History

CO-84-01, October 18, 2001.

§ 614. Record keeping

A. Each person shall keep all records which pertain to or relate in any manner to all sales from any business activity engaged in at any time by such person. Such records shall be maintained separately for each reporting period during which a person is engaged in business activity.

B. Records required to be kept must be preserved for four years beyond the end of the period to which the records relate.

History

CO-84-01, October 18, 2001.

§§ 615 to 619. [Reserved]

§ 620. Allocation of revenue

After allocation to permanent or special revenue funds as required by Navajo Nation law, and allocation to the Tax Administration Suspense Fund as required by the fiscal policy adopted by the Navajo Tax Commission for such Fund, the net revenue from this Chapter shall be disbursed as follows:

A. To the extent that any amount is collected pursuant to Section 605(B) above, that amount shall be transmitted by the Office of the Navajo Tax Commission to the chapter in a timely manner, to be expended in accordance with the ordinance referred to in Section 605(B), above.

B. Except as otherwise provided in Subsection (C), seventy-five percent (75%) of the revenue collected shall be deposited into the General Fund of the Navajo Nation, and twenty-five percent (25%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.

C. Seventy-five percent (75%) of the revenue collected from retail

establishments located in the Navajo Nation shall be deposited into a trust fund to be appropriated pursuant to a plan of operation developed by the Office of Navajo Government Development and approved by the Budget and Finance Committee of the Navajo Nation Council; and twenty-five percent (25%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.

History

CO-38-09, October 22, 2009. Local Sales Tax Act of 2009.

CJA-03-07, January 24, 2007. Increased the sales tax rate from 3% to 4%, effective July 1, 2007.

CO-84-01, October 18, 2001.

§ 621. No conflict with Local Governance Act

The provisions of this Chapter and corresponding regulations shall not be construed inconsistently with the Local Governance Act, 26 N.N.C. §§ 1-2008.

History

CO-84-01, October 18, 2001.

§ 622. 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.

History

CO-84-01, October 18, 2001.

§ 623. Effective date

This Chapter shall take effect in accordance with 2 N.N.C. § 1005.

History

CO-84-01, October 18, 2001.

§ 624. 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.

History

CO-84-01, October 18, 2001.

Chapter 7. Hotel Occupancy Tax

§ 700. Definitions

A. "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist court, lodging house, inn, or rooming house, but does not include a hospital, sanitarium, or nursing home.

B. "Branch" means any person owning, operating, managing or controlling any hotel.

C. "Period" means a calendar quarter any other reporting period established by regulation.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 701. Tax imposed

A. A tax is imposed on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing two dollars (\$2.00) or more each day.

B. The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except for those services related to cleaning and readying the room for use or possession.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

Annotations

1. Validity

While as a general proposition the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers on non-Indian fee land located within reservation boundaries, under *Montana* rule, two possible bases exist for tribal jurisdiction over non-Indian fee land: first, a tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with tribe or its members, through commercial

dealings, contracts, leases, or other arrangements, and second, a tribe may exercise civil authority over conduct of nonmembers on fee lands within reservation when that conduct threatens or has some direct effect on the political integrity, economic security, or health or welfare of tribe. *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 121 S.Ct. 1825, 149 L.Ed.2d 889, (U.S.N.M. 2001).

Indian tribe lacked authority to impose hotel occupancy tax on nonmember guests staying in hotel rooms located on non-Indian fee land that was within boundaries of tribe's reservation; neither exception to general *Montana* rule that inherent sovereign powers of an Indian tribe do not extend to the activities of nonmember was applicable, as no consensual relationship between tribe and hotel guests sufficient to justify taxation existed, and tax was not necessary to vindicate tribe's political integrity. *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 121 S.Ct. 1825, 149 L.Ed.2d 889, (U.S.N.M. 2001).

§ 702. Rate of tax

The rate of tax imposed by this Chapter is five percent (5%) of the price paid for a room in a hotel. On January 1, 1994, the rate of the tax imposed by this Chapter will increase to eight percent (8%) of the price paid for a room in a hotel.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 703. Collection of tax

A branch owning, operating, managing, or controlling a hotel shall collect for the Commission the tax that is imposed by this Chapter and that is calculated on the amount paid for room in the hotel.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 704. Exception: Permanent resident

This Chapter does not impose a tax on a person who has the right to use or possess a room in a hotel for at least 30 consecutive days.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 705. Exception: Navajo Nation

Nothing in this Chapter shall be construed as imposing a tax on the government of the Navajo Nation. For the purposes of this Chapter, the term Navajo Nation does not include tribal enterprises.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 706. Return and payment

On the last day of each period, a branch required to collect the tax imposed by this Chapter shall pay the Commission the tax collected during the preceding period, and at the same time shall file with the Commission a return stating:

A. The total amount of the payments made for rooms at the branch's hotel during the preceding period;

B. The amount of the tax collected by the branch during the preceding period; and

C. Other information that the Commission requires to be in the return. Provided, that the Commission shall be authorized to assess against a branch responsible for the collection of taxes under this Chapter, and that such assessments are presumed to be correct.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 707. Administration

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

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 708. 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 Navajo Nation on the quarterly return, as reimbursement for the cost of collecting the tax, one percent (1%) of the amount of the tax due as shown on the return. If taxes due under this Chapter are not paid to the Navajo Nation 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.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 709. [Reserved]

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 710. Record keeping

Records required to be kept must be preserved for six years beyond the time payment of tax is made, or if no payment is due, for six years beyond the end of the period to which the records relate.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§§ 711 to 737. [Reserved]

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 738. 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.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 739. Effective dates

This Chapter shall take effect upon approval by the Navajo Nation

Council. The tax imposed by this Chapter shall be due and payable for calendar quarters beginning January 1, 1993.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 740. 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.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

§ 741. Allocation

A. Except as provided in Subsection B, the tax imposed by this Chapter is imposed for the purposes of promoting tourism and tourism development. To accomplish this end, this tax shall be retained in a special fund entitled the "Navajo Nation Tourism Fund" which shall be administered by the Navajo Tourism Department, and which shall, consistent with the laws of the Navajo Nation and utilizing the prudent person rule, be applied for the advancement of local tourism promotion, and to develop projects throughout the Navajo Nation. The Division of Economic Development and the Navajo Tourism Department are hereby authorized to develop and recommend to the Budget and Finance Committee of the Navajo Nation Council the Fund's management plan.

B. Any tax imposed by this Chapter that is collected within any duly established Navajo Tribal Park shall be retained within the Navajo Nation Tourism Fund for the exclusive use of the Navajo Parks and Recreation Department for maintenance and improvement of facilities within Navajo Tribal Parks, in accordance with the fund management plan for the Navajo Nation Tourism Fund, which shall be amended by the Budget and Finance Committee to accommodate this provision.

History

CJA-06-09, January 28, 2009. Added Subsection B.

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

Chapter 8. Tobacco Products Tax and Licensing Act

§ 800. Short title

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

History

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

§ 801. Administration

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

History

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

§ 802. Definitions

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

1. "Tobacco" means commercially cultivated tobacco, the leaves of which are processed chiefly for use in cigarettes, cigars, snuff, plug or chewing tobacco, or for smoking in pipes.

2. "Tobacco product" means any commercially processed and/or manufactured product for human consumption which contains tobacco, including cigarettes.

3. "License" means a certificate issued by the Office of the Navajo Tax Commission which authorizes a distributor or retailer to engage in the sale or resale of tobacco products.

4. "Distributor" means any person within the Navajo Nation who manufactures, produces, ships, transports, or imports tobacco products into the Navajo Nation or in any manner acquires or possesses tobacco products for the purpose of making the first sale.

5. "First sale" means the first sale or distribution within the Navajo Nation or the first use or consumption of tobacco products within the Navajo Nation.

6. "Retailer" means any person engaged in the sale or resale of tobacco products within the Navajo Nation.

7. "Sale" means a transfer of possession or ownership between buyer and seller for a consideration.

8. "Consumer" means any person who comes into possession or ownership of a tobacco product by purchasing or otherwise acquiring it for the purpose of using, consuming, or giving away such product.

9. "Period" means one calendar month.

History

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

§ 803. Tax imposed—rates

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

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

History

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

§ 804. Legal incidence

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

History

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

§ 805. Liability for remittance and payment of tax

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

History

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

§ 806. Licensing—requirements

1. All distributors and retailers shall obtain from the Office of the Navajo Tax Commission a license, as defined in § 802(3).

2. The application procedures for obtaining a license and the licensing requirements shall be prescribed in regulations adopted by the Navajo Tax Commission.

3. The Office of the Navajo Tax Commission shall issue a license upon the condition that the applicant fully complies with the provisions of this Chapter and the regulations adopted by the Navajo Tax Commission pursuant to this Chapter.

4. Refusal by the Office of the Navajo Tax Commission to issue or renew a license shall be considered an adverse action under § 131 of the Uniform Tax Administration Statute.

History

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

§ 807. Licensing—enforcement

A. A license may be revoked if the licensee fails to fully comply with this Chapter or the Uniform Tax Administration Statute. If the licensee comes into full compliance within 15 calendar days from the date of the notice of revocation from the Office of the Navajo Tax Commission, the revocation shall be withdrawn. Revocation of a license shall be considered an adverse action.

B. It is unlawful for any person to sell or resell, or have available for sale, tobacco product within the Navajo Nation without a license.

C. Any person engaging in the unlawful action described in Subsection (B)

shall be subject to an initial fine of five hundred thousand dollars (\$500.00), plus an additional fine of five hundred dollars (\$500.00) for each calendar month or part thereof during which the person operates without a license. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the person from all or part of the fine imposed under this Section. Imposition of a fine shall be considered an adverse action.

D. 1. The Office of the Navajo Tax Commission shall issue an order to any person engaging in the unlawful action described in Subsection (B) to cease and desist from such sales. Violation of this order shall subject the tobacco product to seizure by the Office of the Navajo Tax Commission or its designee. Issuance of an order or seizure of the tobacco product shall be considered an adverse action.

2. If the person from whom the tobacco product was seized obtains a license within 10 working days of the seizure, the seized product shall be released to that person. The Office of the Navajo Tax Commission shall act in a timely fashion to grant or deny the issuance of a license. The Office of the Navajo Tax Commission may require the posting of a bond before a license is issued. The requirement of the posting of a bond shall be considered an adverse action.

3. Following a final decision that no license will be issued, the seized tobacco product shall be sold to the highest bidder after public advertisement. Only licensed persons shall be eligible to bid. The proceeds of any sale, less the amount retained by the Office of the Navajo Tax Commission to cover any taxes due and the costs of confiscation and sale, shall be deposited into the General Fund of the Navajo Nation.

History

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

§ 808. Use of funds

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

History

CAP-39-98, April 27, 1998.

CO-107-95, October 25, 1995.

§ 809. Effective date

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

History

CAP-39-98, April 27, 1998.

§ 810. Severability

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

History

CAP-39-98, April 27, 1998.

Chapter 9. Fuel Excise Tax

Part I. General Provisions

§ 901. Purpose and short title

A. Purpose. The Navajo Nation Council hereby enacts this tax for purposes of defraying necessary governmental expenses incurred in providing for the public welfare.

B. Short title. The tax imposed by this Chapter shall be called the "Fuel Excise Tax."

History

CAU-85-99, August 26, 1999.

§ 902. Administration and definitions

A. Administration. All provisions of the Uniform Tax Administration Statute shall apply to this Chapter.

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

1. "Authorized carrier" means any person issued a current and valid authorized carrier's license, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who obtains fuel from a supplier on or for the account of an authorized distributor for importation into and delivery within, the Navajo Nation, and transports such fuel via cargo tank to any person(s) at any location(s) within the Navajo Nation.

"Authorized carrier" does not include any person who imports into, and transports within, the Navajo Nation any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or

transportation.

2. "Authorized carrier's license" means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

3. "Authorized distributor" means any person issued a current and valid authorized distributor's license, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who distributes by any method any amount of fuel within the Navajo Nation.

"Authorized distributor" does not include any person who imports into, and transports within the Navajo Nation any fuel carried in the fuel supply tank of a motor vehicle at the time of such importation and transportation, nor any common carrier who obtains, imports into, or transports and delivers within, the Navajo Nation, on behalf of any distributor, any fuel which is not owned by such common carrier.

4. "Authorized distributor's license" means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

5. "Authorized refiner" means any person issued a current and valid authorized refiner's license, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who refines fuel at any refinery located within the Navajo Nation, and sells, resells, uses or gives away such fuel to distributors, retailers, or consumers.

6. "Authorized refiner's license" means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

7. "Authorized retailer" means any person issued a current and valid authorized retailer's license, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who sells, resells, uses or gives away fuel from any retail facility located within the Navajo Nation or any refinery located within the Navajo Nation, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

8. "Authorized retailer's license" means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

9. "Bill of lading" means any document, way bill, shipping paper, certificate, consignment contract, billing statement, invoice or other written record issued by a supplier, which evidences the obtaining of any amount of fuel from such supplier by any distributor, or any common carrier thereof.

10. "Cargo tank" means any liquid fuel container mounted on or attached to a truck, trailer, wagon, or any other mobile vehicle used for

transporting fuel, but does not include the fuel supply tank of motor vehicles.

11. "Common carrier" means any person, whether an Authorized Carrier or an Unauthorized Carrier, who obtains fuel from a supplier on or for the account of any distributor, for importation into, and delivery within, the Navajo Nation, and transports such fuel via cargo tank to any person(s) at any location(s) within the Navajo Nation.

"Common Carrier" does not include any person who imports into, or transports within, the Navajo Nation any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or transportation.

12. "Consumer" means any person who purchases, acquires, holds, possesses, uses, or consumes any amount of fuel for use by such person and not for resale or transfer to, or use by, any other person(s).

13. "Deliver" or "Delivery" means the physical transfer of any amount of fuel by dispensing or transferring it by any method from a cargo tank, pipeline, or any other container into a fuel storage tank, terminal device, or any other container for purposes of sale, resale, use or giving away of such fuel.

14. "Distribute" means to own by any means any amount of fuel and:

a. To import by any method such fuel into the Navajo Nation for delivery of the fuel to any person(s) at any location(s) within the Navajo Nation; or,

b. At any refinery located within the Navajo Nation, to receive such fuel by any method, which fuel is transferred or dispensed from any container at the refinery into a cargo tank for further transportation in bulk quantities and subsequent delivery to any person(s) at any location(s) within the Navajo Nation.

"Distribute" does not include the importation into, or transportation within, the Navajo Nation of any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or transportation.

15. "Distributor" means any person, whether an Authorized Distributor or an Unauthorized Distributor, who distributes by any method any amount of fuel within the Navajo Nation.

"Distributor" does not include any person who imports into, and transports within, the Navajo Nation any fuel carried in the fuel supply tank of a motor vehicle at the time of such importation and transportation.

16. "Fuel" means flammable hydrocarbon liquid used primarily in internal combustion engines for the generation of power for the propulsion of motor vehicles, and generally dispensed into the fuel supply tank of a motor vehicle, including any blended gasoline of any

type, and diesel fuel.

"Fuel" does not include kerosene, liquefied petroleum gas, compressed or liquefied natural gas, butane, propane, non-fuel stove oil, and fuel products used for the propulsion of aircraft.

17. "Fuel supply tank" means any receptacle on a motor vehicle designed for containing fuel from which such fuel is supplied directly to the engine of a motor vehicle for purposes of propulsion of the motor vehicle.

18. "Gallon" means the quantity of fuel, which fills a standard United States gallon liquid measurement.

19. "Government vehicle" means any motor vehicle, which is owned and operated exclusively by the government of the Navajo Nation or any political subdivision, chapter, enterprise, or instrumentality thereof.

20. "Import" or "Importation" means to cause, by any means, to be transported across the exterior boundaries of, and into, the jurisdiction of the Navajo Nation.

21. "Manifest" means the original individually-numbered document, or non-carbon reproduction thereof (Form NN-MANF-), issued by the Office of the Navajo Tax Commission to an Authorized Distributor authorizing the Authorized Distributor, or an Authorized Carrier thereof, to obtain a fuel load from a supplier for distribution of such fuel within the Navajo Nation.

22. "Motor vehicle" means any self-propelled motor-driven mobile vehicle operated primarily or incidentally on a highway, and includes vehicles designed for grading, paving, earth moving, or other construction or demolition purposes, all-terrain vehicles, motor scooters and cycles, motor boats, jet skis or other watercraft, snowmobiles, and any other recreational motor vehicle designed primarily for use off-road, or any other motor vehicle which may not be subject to license for operation on a highway, but does not include aircraft of any kind.

23. "Period" means one calendar month.

24. "Refine" or "Refining" means to produce, manufacture, blend or compound, or otherwise prepare as a finished product by any method, any amount of fuel for purposes of sale, resale, use or giving away as such finished product.

25. "Refiner" means any person, whether an Authorized Refiner or an Unauthorized Refiner, who refines any amount of fuel at any refinery and sells, resells, uses or gives away such fuel to consumers, distributors, or retailers.

26. "Refinery" means any plant, facility, or other location where any amount of fuel is refined by any method.

27. "Regulations" means the regulations adopted by official

resolution of the Navajo Tax Commission for purposes of administering the letter and intent of this Chapter.

28. "Retail Facility" means any place of business where any amount of fuel is delivered and/or received by any method for purposes of sale, resale, use or giving away by any retailer.

29. "Retailer" means any person, whether an Authorized Retailer or an Unauthorized Retailer, who sells, resells, uses or gives away any amount of fuel from any retail facility or any refinery, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

30. "Retailing" means to sell, resell, use or give away any amount of fuel from any retail facility or any refinery, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

31. "Sale" or "Sell" means the transfer of ownership, title, or possession to another in exchange for a consideration and includes the transfer of possession on a consignment basis.

32. "Supplier" means any person engaged in the business of selling bulk quantities of fuel to other persons for purposes of further transportation of such fuel in bulk quantities for subsequent delivery and sale.

33. "Unauthorized Carrier" means any person not issued a current and valid Authorized Carrier's License, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who obtains fuel from a supplier on or for the account of any distributor, for importation into and delivery within, the Navajo Nation, and transports such fuel via cargo tank to any person(s) at any location(s) within the Navajo Nation.

"Unauthorized Carrier" does not include any person who imports into, or transports within, the Navajo Nation any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or transportation.

34. "Unauthorized Distributor" means any person not issued a current and valid Authorized Distributor's License, issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who distributes by any method any amount of fuel within the Navajo Nation.

"Unauthorized Distributor" does not include any person who imports into, and transports within, the Navajo Nation any fuel carried in the fuel supply tank of a motor vehicle at the time of such importation and transportation.

35. "Unauthorized Refiner" means any person not issued a current and valid Authorized Refiner's License, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who refines fuel at any refinery located within the Navajo Nation, and sells, resells, uses or gives away fuel to

consumers, distributors, or retailers.

36. "Unauthorized Retailer" means any person not issued a current and valid Authorized Retailer's License, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who sells, resells, uses or gives away fuel from any retail facility located within the Navajo Nation or any refinery located within the Navajo Nation, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

History

CAU-85-99, August 26, 1999.

Part II. Tax Administration

§ 903. Tax imposed

For the privilege of distributing or retailing any amount of fuel within the Navajo Nation, there is imposed an excise tax on each gallon of fuel, or fraction thereof, at the rate fixed by § 905 of this Chapter.

History

CAU-85-99, August 26, 1999.

§ 904. Taxable unit

The unit of fuel on which the fuel excise tax is imposed is the gallon, with the tax computed to the nearest mill on all amounts of fuel.

History

CAU-85-99, August 26, 1999.

§ 905. Rate of tax

The rate of tax imposed by this Chapter shall be set in regulations, provided that the rate shall not be less than ten (10 cents per gallon and no more than twenty-five (25 cents per gallon. Until another rate is established, the rate shall be eighteen (18 cents per gallon (.18 x number of gallons or fraction thereof).

History

CAU-85-99, August 26, 1999.

§ 906. Legal incidence

A. Fuel imported into the Navajo Nation.

1. Time and place of importation. Any and all fuel that is imported into the Navajo Nation for purposes of delivery to any person(s)

at any location(s) within the Navajo Nation, other than in the fuel supply tank of a motor vehicle, is taxed at the time and place such fuel is imported.

2. Distributors liable for tax. The tax imposed by this Chapter is presumed to be a tax on all distributors of any amount of fuel imported into the Navajo Nation, notwithstanding the use of any common carrier. The distributor owning fuel at the time and place of importation of such fuel is the taxpayer.

3. Payment by distributors. For each period, all distributors shall pay any and all fuel excise tax or taxes due on all amounts of imported fuel, less the applicable discount, if any, taken pursuant to § 915(A)(3) of this Chapter. Any amount of fuel excise tax or taxes that arise shall constitute a debt owed by the distributor until paid in full to the Office of the Navajo Tax Commission.

B. Fuel refined within the Navajo Nation.

1. Time and place of transfer at a refinery. Fuel refined at a refinery located within the Navajo Nation by any person is taxable at the time and place of transfer at the refinery of such fuel by any method from one container into a separate fuel container, and is taxable to the person owning such fuel immediately after its transfer, so long as there is no further transportation of the fuel in bulk quantities for purposes of sale, resale, use or giving away directly from such container.

2. Payment by refiners or retailers. For each period, the person owning the fuel immediately after its transfer as described in § 906(B)(1) of this Chapter, shall pay directly to the Office of the Navajo Tax Commission any and all fuel excise tax or taxes due on all amounts of transferred fuel, less the applicable discount, if any, taken pursuant to § 915(C)(3) of this Chapter. Any amount of fuel excise tax or taxes that arise shall constitute a debt owed by such person(s) until paid in full to the Office of the Navajo Tax Commission.

3. Time and place of loading into a cargo tank. Fuel that is loaded by any method from any refinery located within the Navajo Nation into a cargo tank is taxable at the time and place of such loading to the distributor on or for whose account such fuel was loaded for further transportation in bulk quantities and subsequent delivery to any person(s) at any location(s) within the Navajo Nation.

4. Payment by distributors. For each period, all distributors, on or for whose account fuel was loaded as described in § 906(B)(3) of this Chapter, shall pay any and all fuel excise tax or taxes due on all amounts of such fuel, less the applicable discount, if any, taken pursuant to § 915(A)(3) of this Chapter. Any amount of fuel excise tax or taxes that arise shall constitute a debt owed by such distributors until paid in full to the Office of the Navajo Tax Commission.

C. Fuel retailed within the Navajo Nation. Any retailer, whether authorized or unauthorized, who has controlled or obtained by any method any amount of fuel on which the fuel excise tax has not been timely paid in full,

shall be liable for payment of any and all fuel excise tax or taxes due for all such fuel received or obtained by the retailer.

History

CAU-85-99, August 26, 1999.

§ 907. Retailer notice requirement

A. Tax must be indicated. All retailers shall keep posted at all times on all fuel pumps or other fuel dispensing apparatus at any and all retail facilities located within the Navajo Nation, a notice reading substantially as follows:

"THE PRICE OF MOTOR VEHICLE FUEL INCLUDES APPLICABLE NAVAJO NATION FUEL EXCISE TAX COMPUTED TO THE NEAREST MILL ON EACH GALLON OR FRACTION THEREOF."

B. Notice regarding other applicable fuel taxes. In accordance with regulations, all retailers shall keep posted at all times on all fuel pumps or other fuel dispensing apparatus at any and all retail facilities located within the Navajo Nation an appropriate notice regarding any other applicable fuel tax.

History

CAU-85-99, August 26, 1999.

§ 908. Fuel inventories and payment of tax

A. Inventory requirement. The fuel excise tax imposed by this Chapter applies to all fuel within the Navajo Nation other than fuel contained in the fuel supply tank of a motor vehicle, as of the date that the tax becomes effective or the tax rate is increased. By the close of business on such day, each and every owner of fuel storing, controlling, transporting, holding or otherwise possessing any amount of fuel shall take a complete inventory of the total amount of gallons of such fuel on hand, including any fuel loads in transit, and record such inventory.

B. Reporting and payment requirement. Within 10 days of taking fuel inventory as required by § 908(A) of this Chapter, each and every person owning any amount of fuel inventory shall prepare and submit to the Office of the Navajo Tax Commission a written record of such inventory, in form and content prescribed by regulations, which report shall be accompanied by a Fuel Excise Tax Return and payment in full of all fuel excise tax or taxes due on such inventory, as required by § 915 of this Chapter and corresponding regulations.

C. Discount for timely reporting and payment. Any person owning any amount of fuel inventory who is in compliance with all applicable provisions of this Chapter and corresponding regulations, and who timely submits a fuel inventory record accompanied by a Fuel Excise Tax Return and timely submits payment in full of all fuel excise tax or taxes due on such inventory, as required by § 908(B) of this Chapter, may claim a discount on the payment of such fuel excise tax in an amount specified by regulations. Until another amount is set by regulations, the discount shall be one-half of one-percent

(1/2%) of the number of gallons reported on the return (.005 x number of gallons or fraction thereof).

D. Regulations. The procedure for administration of this § 908 shall be prescribed and governed by regulations.

History

CAU-85-99, August 26, 1999.

§ 909. Exemptions

The fuel excise tax imposed by this Chapter does not apply to any amount of fuel used solely and exclusively for the following:

A. Propulsion and operation of a farm tractor or other farm machinery designed primarily for agricultural use;

B. Operation of electricity-producing generators for private residential or household use;

C. Operation of chainsaws, lawn mowers, or other landscaping or wood-cutting machinery;

D. Propulsion of any government vehicle.

History

CAU-85-99, August 26, 1999.

§ 910. Refunds

A. Consumer refunds. A refund of the fuel excise tax, if based on any exemption(s) listed in § 909 of this Chapter, shall be available only to a consumer who provides adequate proof that the fuel excise tax has been charged to and paid in full by such consumer for any and all fuel purchases for which the consumer seeks a fuel excise tax refund.

B. Refunds due to loss or destruction.

1. Authorized distributors and authorized retailers only. A refund of the fuel excise tax shall be available only to an authorized distributor or an authorized retailer for fuel which has been lost or destroyed by fire, accident, leakage, acts of God, or other mishap while such fuel was owned, at the time of such loss or destruction, by the authorized distributor or authorized retailer seeking a fuel excise tax refund.

2. Requirements of proof. Refunds under this § 910(B) shall be available only upon adequate proof of the following:

a. That the fuel excise tax on any and all such fuel lost or destroyed has been charged to and paid in full by the authorized distributor or the authorized retailer seeking a refund; and

b. Full compliance by the authorized distributor or the authorized retailer seeking a refund, both at the time of loss or destruction of fuel and at the time the application for refund is received by the Office of the Navajo Tax Commission, with all applicable provisions of this Chapter; and

c. Full compliance at the time of loss or destruction, by any person(s) possessing the fuel at the time of such loss or destruction, with all applicable provision(s) of § 911 of this Chapter; and

d. Proof that such loss or destruction was not due to the negligence or recklessness of the authorized distributor or the authorized retailer seeking a refund, or of any person(s) possessing the fuel at the time of loss or destruction; and

e. Proof that such loss or destruction was not due to any violation(s) of applicable Navajo Nation law or any applicable federal law, with a fine or any other punishment constituting a violation; and

f. Any other requirements adopted by regulations.

C. Regulations. The procedure for refunds under this § 910 shall be prescribed and governed by regulations.

History

CAU-85-99, August 26, 1999.

Part III. Enforcement

§ 911. Licensing

A. Licenses required. Except for fuel contained in the fuel supply tank of a motor vehicle, licenses must be obtained from the Office of the Navajo Tax Commission as follows:

1. Authorized distributors. For the privilege of distributing within the Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized distributor's license.

2. Authorized carriers. For the privilege of importing into, or carrying or transporting within, the Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized carrier's license.

3. Authorized refiners. For the privilege of refining within the Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized refiner's license.

4. Authorized retailers. For the privilege of retailing within the

Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized retailer's license.

B. Term and fee.

1. Licenses required yearly. A separate license must be secured and maintained for each calendar year, or fraction thereof, ending on December 31st, during which a person seeks to operate as a licensee. In the case of an existing licensee, the deadline for receipt of an application by the Office of the Navajo Tax Commission for a new license to operate for the subsequent year shall be 10 calendar days prior to the date of expiration of the existing license.

2. License fee. The application fee for any license applied for under this § 911 shall be set by regulations, but shall not be less than one hundred dollars (\$100.00) per calendar year, or fraction thereof, ending on December 31st. Until another fee is set, the license fee shall be one hundred dollars (\$100.00). A separate application fee must be paid for each calendar year, or fraction thereof, ending on December 31st, for which a person seeks to secure and maintain a license. The application fee is non-refundable and shall be retained by the Office of the Navajo Tax Commission whether or not the applicant is issued a license.

C. Criteria of licensees. As a condition of securing and maintaining any license under this § 911, any person(s) applying for a license, shall, from the date of receipt of a license application by the Office of the Navajo Tax Commission to the time of issuance of such license, or the issuance of a Letter of License Denial, satisfy in full all of the following criteria:

1. No felony conviction of the applicant, or any officer or any director thereof, in any Navajo Nation court or any other court of competent jurisdiction, within 10 years prior to the issuance of a license by the Office of the Navajo Tax Commission; and

2. No permanent or temporary suspension or revocation of any license or other authorization granted or issued to the license applicant, or any officer or any director thereof, which pertains in any manner to the distribution, carrying or transportation of fuel via cargo tank, refining, or retailing of fuel, which was issued by the Office of the Navajo Tax Commission or any other jurisdiction, within 10 years prior to the issuance of a license by the Office of the Navajo Tax Commission; and

3. Disclosure of all principal and primary persons involved in any way with the license applicant; and

4. Proof of insurance, in an amount prescribed and governed by regulations, for purposes of indemnification for any loss of, destruction of, or damage caused by, any amount of fuel which will be imported into, or distributed, transported, delivered, refined, or retailed within, the Navajo Nation, by or on behalf of the license applicant; and

5. Adequate proof that the license applicant, or any employees, agents, or other personnel thereof who will be engaged in the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel, have been certified by a recognized and accredited program as trained in appropriate safety procedures pertaining to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel; and

6. Adequate proof that any and all fuel transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel, to be used by the license applicant or any employees, agents, or other personnel thereof, have been fully inspected and certified as fully complying with all applicable laws and/or regulations pertaining to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel, of the federal government and any state(s) where such vehicles or other personal property were licensed, manufactured or constructed, leased, purchased or obtained by any means; and

7. In the case of an applicant for an authorized distributor's license, the posting of a bond with the Office of the Navajo Tax Commission as follows:

a. Such bond may be in the form of a cash payment or a bond issued by a surety, or may be in the form of any other acceptable negotiable instrument in lieu thereof; and

b. The dollar amount of such bond shall be equal to or greater than double the full amount of fuel excise tax which the Office of the Navajo Tax Commission estimates to be due for the first period in which the license applicant proposes to operate as an authorized distributor; and

c. The bond shall be retained by the Office of the Navajo Tax Commission for a minimum time of at least two calendar years from the date of posting of the bond, and thereafter shall be released only to an authorized distributor who is in full compliance, for the entire duration such bond is held, with all applicable provisions of this Chapter and corresponding regulations; and

d. The bond shall be released by the Office of the Navajo Tax Commission in accordance with procedures prescribed and governed by regulations; and

8. In the case of an applicant for an authorized carrier's license, proof of such applicant's possession of a current and valid transportation and/or common carrier's license issued by the United States Interstate Commerce Commission or equivalent state agency; and

9. No violation(s) of any applicable Navajo Nation law or any

applicable federal law, with a fine or any other punishment constituting a violation, within 10 years prior to the receipt by the Office of the Navajo Tax Commission of the application for a license; and

10. Any other requirements for licensing adopted by regulations.

D. Licenses non-transferable. No license issued by the Office of the Navajo Tax Commission pursuant to this Chapter shall be assigned or transferred in any manner, except as specifically provided by resolution of the Navajo Tax Commission in its discretion.

E. License or letter of denial. The Office of the Navajo Tax Commission shall issue a license, or shall issue a Letter of License Denial within 30 days after the application for license is received by the Office of the Navajo Tax Commission. Failure of the Office of the Navajo Tax Commission to issue a license or Letter of License Denial within the 30 day period shall be deemed a Letter of License Denial.

F. Regulations. The procedure for administration of licensing under this § 911 shall be prescribed and governed by regulations.

G. Appeal. A Letter of License Denial shall be considered an adverse action which may be appealed pursuant to § 131 of the Uniform Tax Administration Statute.

History

CAU-85-99, August 26, 1999.

§ 912. Restrictions on fuel importation, distribution, transportation, refining and retailing

A. Persons authorized to import, distribute, and/or transport fuel. Other than in the fuel supply tank of a motor vehicle, fuel shall not be imported into, and/or transported or distributed within, by any method, the Navajo Nation, except by the following persons as hereby authorized:

1. Any authorized distributor who is in full compliance with all requirements of § 911, § 913(A), and any other applicable provision(s) of this Chapter and corresponding regulations; and/or

2. Any authorized carrier who is in fully compliance with all applicable requirements of § 911, § 913(B), and any other applicable provision(s) of this Chapter and corresponding regulations.

B. Persons authorized to refine fuel. Only authorized refiners in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations, are hereby authorized to refine any amount of fuel within the Navajo Nation.

C. Persons authorized to retail fuel. Only authorized retailers in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations, are hereby authorized to retail any amount of fuel within the Navajo Nation.

History

CAU-85-99, August 26, 1999.

§ 913. Procedures for lawful importation and distribution

A. Importation and distribution by authorized distributors. Any authorized distributor in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations is hereby authorized to distribute fuel within the Navajo Nation by fully complying with all of the following provisions:

1. Issuance of manifests. In the case of distribution of fuel by cargo tank, the authorized distributor must first notify the Office of the Navajo Tax Commission of its proposed importation of each and every single load or shipment of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

The Office of the Navajo Tax Commission may then issue a manifest for such fuel authorizing the authorized distributor to acquire the fuel from the supplier. The manifest must be in the form and content prescribed by regulations and must identify the authorized distributor as the buyer of fuel.

2. Bill of lading required. In the case of distribution of fuel by cargo tank, the authorized distributor must secure a valid bill of lading issued by the supplier for each and every single shipment or load of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

3. Authorized Distributor responsible for tax. In the case of distribution of fuel by any method, the authorized distributor shall be deemed the distributor of fuel imported under this § 913(A), and shall timely remit to the Office of the Navajo Tax Commission any and all fuel excise tax or taxes due on such imported fuel along with a fully completed Fuel Excise Tax Return for such fuel, as required by regulations.

B. Importation by authorized carriers. Any authorized carrier in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations is hereby authorized to import fuel into, and/or transport and deliver fuel within, the Navajo Nation, by fully complying with all of the following provisions:

1. Authorized carrier contract with authorized distributor. The authorized carrier must first contract only with an authorized distributor who is in full compliance with all requirements of § 911, § 913(A), and any other applicable provision(s) of this Chapter and corresponding regulations.

2. Issuance of a manifest. The authorized carrier, or authorized

distributor employing such authorized carrier, must notify the Office of the Navajo Tax Commission of its proposed importation of each and every single load or shipment of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation. The Office of the Navajo Tax Commission may then issue a manifest for such fuel authorizing the authorized carrier to obtain the fuel from the supplier. The manifest must be in the form and content prescribed by regulations and must identify the authorized distributor as the buyer of fuel, and must identify the authorized carrier as the carrier of fuel.

3. Bill of lading required. The authorized carrier, or authorized distributor employing such authorized carrier, must secure a valid bill of lading issued by the supplier for each and every single shipment or load of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

4. Authorized distributor remains liable. Notwithstanding the use of an authorized carrier, the authorized distributor shall be deemed, for purposes of this § 913(B), the distributor of fuel imported and shall comply with all requirements of § 913(A) of this Chapter and corresponding regulations.

C. Authority to issue manifests. The Office of the Navajo Tax Commission is hereby authorized to issue a Navajo Nation manifest (Form NN-MANF-), to any authorized distributor in full compliance with all applicable requirements of this Chapter and corresponding regulations or to any authorized carrier in full compliance with all applicable requirements of this Chapter and corresponding regulations, for each and every single load or shipment of any amount of fuel obtained for importation into, and/or transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

History

CAU-85-99, August 26, 1999.

CD-81-03, December 23, 2003.

§ 914. Detention and inspection

A. Carrying of documents. A current and valid original of the following documents, completed in full, shall be kept on file at the Office of the Navajo Tax Commission, and an exact copy thereof must be carried at all times in any vehicle in which any amount of fuel is being imported into, and transported within, the Navajo Nation:

1. Authorized carrier's license; and
2. In the case of a distributor who is also acting as a common carrier, an authorized distributor's license; and
3. Bill(s) of lading pertaining to the fuel load being imported and

transported, issued by the supplier; and

4. Manifest(s) pertaining to the fuel load being imported and transported, issued by the Office of the Navajo Tax Commission.

B. Presentation of documents. Any license, bill of lading, manifest, application, report, return, form, inventory record, or any other document required to be secured and maintained, filed, and/or carried under any applicable provision(s) of this Chapter and corresponding regulations must be immediately delivered up and presented upon request by a representative or designee of the Office of the Navajo Tax Commission, or any on-duty officer of the Navajo Nation Division of Public Safety.

C. Authorization to stop, detain, and inspect. For purposes of determining compliance by any person(s) with any and all applicable provision(s) of this Chapter and corresponding regulations, the representative, designee, or officer is hereby authorized and directed to stop, detain and/or inspect at any time, any fuel transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel.

D. Presentation of vehicles or other property. Any fuel inventory, transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel must be immediately delivered up and presented upon request by a representative or designee of the Office of the Navajo Tax Commission, or any on-duty officer of the Navajo Nation Division of Public Safety.

E. Notification of violation. Upon discovery of any failure to comply by any person(s) with any and all applicable provision(s) of this Chapter and corresponding regulations, the representative, designee, or officer is hereby authorized and directed to immediately notify the Office of the Navajo Tax Commission of the violation(s) and identify the violator(s).

History

CAU-85-99, August 26, 1999.

§ 915. Filing of returns and payment of tax

A. Distributors.

1. Monthly returns. All distributors, whether authorized or unauthorized, shall prepare and submit, on a monthly basis, to the Office of the Navajo Tax Commission a Fuel Excise Tax Return (Form 900), for each period for any fuel excise tax or taxes that arise, as prescribed by regulation. Returns are due on the twentieth day of each month immediately following the end of each period.

2. Payment of tax. All distributors, whether authorized or

unauthorized, shall timely remit to the Office of the Navajo Tax Commission all fuel excise tax or taxes imposed by this Chapter. Payment in full of the tax or taxes owed is due at the time the Fuel Excise Tax Return is due. The returns required to be filed under § 915(A)(1) of this Chapter shall be accompanied by payment in full of all fuel excise tax or taxes due.

3. Discount for timely remittance. Any authorized distributor who is in compliance, both at the time the fuel excise tax arises and at the time the return and payment are due, with all applicable provisions of this Chapter and corresponding regulations, and who timely files a Fuel Excise Tax Return and timely remits all fuel excise tax due with respect to such return may claim a discount on the payment of such fuel excise tax in an amount specified by regulations. Until another amount is set by regulations, the discount shall be one-half of one-percent (1/2 %) of the number of gallons reported on the return (.005 x number of gallons or fraction thereof).

B. Carriers. All common carriers, whether authorized or unauthorized, shall prepare and submit, on a monthly basis, to the Office of the Navajo Tax Commission a Carrier's Reporting Form (Form NN-CAR-), for each period, as prescribed by regulation. Forms are due on the twenty-fifth day of each month immediately following the end of each period.

C. Refiners.

1. Quarterly reports. All refiners, whether authorized or unauthorized, shall prepare and submit, on a quarterly basis, to the Office of the Navajo Tax Commission a Refiner's Reporting Form (Form NN-REF-), for each quarter, as prescribed by regulation. Forms are due on the twentieth day of each month immediately following the end of each quarter.

2. Filing of returns and payment of tax. All refiners, whether authorized or unauthorized, who own fuel immediately after its transfer as described in § 906(B)(1)-(2) of this Chapter shall timely remit to the Office of the Navajo Tax Commission fuel excise tax returns accompanied by payment in full of all fuel excise tax or taxes due, as required of distributors by all provisions of § 915(A) of this Chapter and corresponding regulations.

3. Discount for timely remittance. Any authorized refiner who is in compliance, both at the time the fuel excise tax arises and at the time the return and payment are due, with all applicable provisions of this Chapter and corresponding regulations, and who timely files a Fuel Excise Tax Return and timely remits all fuel excise tax due with respect to such return may claim a discount on the payment of such fuel excise tax in an amount specified by regulations. Until another amount is set by regulations, the discount shall be one-half of one-percent (1/2 %) of the number of gallons reported on the return (.005 x number of gallons or fraction thereof).

D. Retailers.

1. Quarterly reports. All retailers, whether authorized or unauthorized, and whether or not obtaining fuel as described in § 906(C) of this Chapter, shall prepare and submit, on a quarterly basis, to the Office of the Navajo Tax Commission a Retailer's Reporting Form (Form NN-RET-), for each quarter, as prescribed by regulation. Forms are due on the twenty-fifth day of each month immediately following the end of each quarter.

2. Filing of returns and payment of tax. All retailers, whether authorized or unauthorized, who have controlled or obtained by any method any amount of fuel on which the fuel excise tax has not been timely paid in full shall immediately remit to the Office of the Navajo Tax Commission fuel excise tax returns accompanied by payment in full of all fuel excise tax or taxes due, as required of distributors by all provisions of § 915(A) of this Chapter and corresponding regulations.

3. No discount for fuel on which the fuel excise tax has not been timely paid. No discount shall be available to retailers for the payment of fuel excise tax as required by § 915(D)(2) of this Chapter, for fuel on which the fuel excise tax has not been timely paid in full which fuel has been controlled or obtained by a retailer.

E. Regulations administering discount. The procedure for claiming a discount under any applicable provision of this § 915 shall be prescribed and governed by regulations.

History

CAU-85-99, August 26, 1999.

CD-81-03, December 23, 2003.

§ 916. Record keeping

Where appropriate, any and all distributors, common carriers, refiners, and retailers required by this Chapter to file any application, report, return, and/or form shall maintain full, true, legible, and accessible records, for four years beyond the period to which the records relate, pertaining in any manner to the following:

A. All incidents of receipt, acquisition, delivery, or distribution of fuel by any method;

B. All incidents, with dates and volumes, of fuel transfers and/or sales;

C. All suppliers, distributors, common carriers, refiners, retailers, sellers, and/or buyers of fuel;

D. All person(s) and location(s) within the Navajo Nation to which fuel was delivered by any method; and

E. Any other information required by regulations.

History

CAU-85-99, August 26, 1999.

§ 917. Violations

In addition to violations described in the Uniform Tax Administration Statute, the following violations of this Chapter shall apply:

A. Presentation of documents. Each single act of refusal or failure by any person(s) to present, upon request by a representative or designee of the Office of the Navajo Tax Commission or an on-duty officer of the Navajo Nation Division of Public Safety, any license, bill of lading, manifest, application, report, return, form, inventory record, or any other document required to be secured and maintained, filed, and/or carried under any applicable provision(s) of this Chapter shall constitute a separate violation.

B. Permission to inspect. Each single act of refusal or failure by any person(s) to permit, upon request by a representative or designee of the Office of the Navajo Tax Commission or an on-duty officer of the Navajo Nation Division of Public Safety, the inspection of any and all fuel inventory, transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel shall constitute a separate violation.

C. Unlawful distribution of fuel. Each single act by any person(s) of importation into, or transportation, delivery, or distribution within, the Navajo Nation of any amount of fuel shall constitute a separate violation by such person(s) who, at the time of importation, transportation, delivery, or distribution of such fuel, owns the fuel and:

1. Fails to secure, maintain, carry, or deliver up a valid authorized distributor's license as required under § 911 and § 914 of this Chapter and corresponding regulations;

2. Fails to secure, maintain, carry, or deliver up any manifest(s) and/or bill(s) of lading with all appropriate information thereon, as required by § 914 of this Chapter and corresponding regulations;

3. In such case where any common carrier is employed by any distributor to transport fuel, such distributor shall be deemed vicariously liable for the failure of such common carrier thereof to secure, maintain, carry, or deliver up a valid authorized carrier's license or any manifest(s) and/or bill(s) of lading with all appropriate information thereon, as required by § 911 and § 914 of this Chapter and corresponding regulations;

4. Has failed to prepare and timely submit a report of any fuel inventory, and timely submit a Fuel Excise Tax Return accompanied by payment in full of any fuel excise tax or taxes due on such inventory, as required by § 908 of this Chapter and corresponding regulations.

D. Unlawful transportation of fuel. Each single act by any person(s) of

importation into, or transportation or delivery within, the Navajo Nation of any amount of fuel shall constitute a separate violation by such person(s) who, at the time of importation, transportation, or delivery of fuel:

1. Fails to secure, maintain, carry, or deliver up a valid authorized carrier's license, as required under § 911 and § 914 of this Chapter and corresponding regulations;

2. Fails to secure, maintain, carry, or deliver up a valid manifest(s) and/or bill(s) of lading with all appropriate information thereon, as required by § 914 of this Chapter and corresponding regulations, which violation applies in addition to the vicarious liability of any distributor under § 917(C)(3) of this Chapter, if any;

3. Has failed to prepare and timely submit a Carrier's Reporting Form (Form NN-CAR-), as required by § 915(B) of this Chapter and corresponding regulations;

4. In such case where any common carrier transports fuel on behalf of any distributor, such common carrier shall be deemed vicariously liable for the failure of such distributor to secure and maintain a valid authorized distributor's license, as required by § 911 of this Chapter and corresponding regulations.

E. Unlawful refining of fuel. Each single act by any person(s) of refining of any amount of fuel at any refinery located within the Navajo Nation shall be considered a separate violation if such person(s) at the time of refining:

1. Fails to secure, maintain, carry, or deliver up a valid authorized refiner's license, as required under § 911 and § 914 of this Chapter and corresponding regulations;

2. Has failed to prepare and timely submit a Refiner's Reporting Form (Form NN-REF-), as required by this Chapter and corresponding regulations;

3. Has failed to prepare and timely submit a report of any fuel inventory, and timely submit a Fuel Excise Tax Return accompanied by payment in full of any fuel excise tax or taxes due on such inventory, as required by § 908 of this Chapter and corresponding regulations.

F. Unlawful retailing of fuel. Each single act by any person(s) of retailing of any amount of fuel shall be considered a separate violation if such person(s) at the time of retailing:

1. Fails to secure, maintain, carry, or deliver up a valid authorized retailer's license, as required under § 911 and § 914 of this Chapter and corresponding regulations;

2. In the case of fuel delivery by cargo tank, has acquired such fuel from any person(s) who was not an authorized distributor duly licensed at the time of such fuel acquisition, or who was not an authorized carrier thereof duly licensed at the time of such fuel

acquisition;

3. Fails to post a notice as required by § 907 of this Chapter and corresponding regulations;

4. Has failed to prepare and timely submit a Retailer's Reporting Form (Form NN-RET-), as required by this Chapter and corresponding regulations;

5. Has failed to prepare and timely submit a report of any fuel inventory, and timely submit a Fuel Excise Tax Return accompanied by payment in full of any fuel excise tax or taxes due on such inventory, as required by § 908 of this Chapter and corresponding regulations.

G. Other violations. Each act or omission, or any document filed or submitted, shall be considered a separate violation by any person(s) who knowingly:

1. Has failed to prepare and timely submit a completed Fuel Excise Tax Return for any tax or taxes due, as required by this Chapter and corresponding regulations;

2. Has failed to timely remit payment in full of any fuel excise tax or taxes due, as required by this Chapter and corresponding regulations;

3. Refuses or fails to file a report or return as required by any applicable provision(s) of this Chapter and/or corresponding regulations;

4. Knowingly makes a false statement in connection with the administration of any provision(s) of this Chapter and/or corresponding regulations;

5. Fails to keep any and all records as required by § 916 of this Chapter and/or corresponding regulations;

6. Collects a refund or discount of fuel excise tax or taxes without being lawfully entitled under this Chapter and/or corresponding regulations to receive such refund or discount;

7. Causes to be paid to any other person(s) a refund or discount of the fuel excise tax or taxes which refund or discount such person(s) is not lawfully entitled under this Chapter and/or corresponding regulations to receive;

8. Violated any applicable Navajo Nation law or any applicable federal law, with a fine or any other punishment constituting a violation, at any time during which the violator ostensibly possesses a license issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter;

9. Violates any other applicable provision(s) of this Chapter and/or corresponding regulations.

H. Regulations. The procedure for administration of this § 917 shall be prescribed and governed by regulations.

History

CAU-85-99, August 26, 1999.

§ 918. Penalties

In addition to the penalties provided for in the Uniform Tax Administration Statute, the following penalties shall apply whenever any activity by any person(s) constitutes an immediate and substantial threat to the collection of taxes imposed by this Chapter and is attributable to the activity:

A. Suspension and revocation of license. Regardless of the date of discovery of any violation(s), the license(s) (if any) of the violator(s) shall be deemed automatically suspended pending a preliminary review by the Office of the Navajo Tax Commission. The suspension shall be deemed effective as of the date of the first act, omission, or date of any document filed or submitted, in violation of this Chapter and corresponding regulations.

B. Closure of refinery. The Office of the Navajo Tax Commission is hereby authorized to immediately close any refinery that is in violation of any applicable provision(s) of this Chapter and corresponding regulations, by issuing a Notice of Closure to the alleged violator(s). Thereafter, the privilege of any violator(s) to engage in productive activity within the Navajo Nation may be immediately suspended according to procedures found in the Uniform Tax Administration Statute.

C. Closure of retail facility. The Office of the Navajo Tax Commission is hereby authorized to immediately close any retail facility that is in violation of any applicable provision(s) of this Chapter and corresponding regulations, by issuing a Notice of Closure to the alleged violator(s). Thereafter, the privilege of any violator(s) to engage in productive activity within the Navajo Nation may be immediately suspended according to procedures found in the Uniform Tax Administration Statute.

D. Impoundment of fuel, vehicles, or other property. The Office of the Navajo Tax Commission, or any on-duty officer of the Navajo Nation Division of Public Safety, is hereby authorized to immediately detain and/or impound any fuel load, fuel inventory on hand, transportation vehicles, cargo tanks, storage tanks, equipment paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the distribution, transportation, delivery, refining, storage, possession, or retailing of fuel, which fuel or property is owned or possessed by any person(s) discovered violating or having violated any applicable provision(s) of this Chapter and corresponding regulations.

E. Preliminary review.

1. Request for preliminary review. Within 10 calendar days from receipt by the alleged violator(s) of a Notice of License Suspension or a Notice of Closure, the alleged violator(s) may request a preliminary

review of the action taken by the Office of the Navajo Tax Commission. Upon receipt by the Office of the Navajo Tax Commission of a written request for review by the alleged violator(s), a preliminary review shall be held within 30 calendar days after receipt by the Office of the Navajo Tax Commission of the request for review.

2. Purpose of preliminary review. The preliminary review shall be held for the purpose of determining the following:

a. A license suspension occurring pursuant to § 918(A) is to be lifted or continued for any amount of time specified in regulations, or the suspended license is to be revoked permanently, or for any amount of time specified in regulations; or

b. A closure of a refinery or retail facility is to be rescinded or continued for any amount of time specified in regulations, or the refinery or retail facility is to be permanently closed.

3. Burden of proof at preliminary review. At the preliminary review, the alleged violator(s) shall bear the burden of demonstrating, by a preponderance of the evidence, good cause why the action taken by the Office of the Navajo Tax Commission under § 918 (A)-(D) of this Chapter should not be continued.

F. Action after preliminary review. Notwithstanding the filing of an appeal by an alleged violator(s) under § 918(G) of this Chapter, upon determination by the Office of the Navajo Tax Commission after the preliminary review conducted pursuant to § 918(E) of this Chapter that any adverse action taken by the Office of the Navajo Tax Commission under § 918(A)-(D) of this Chapter is not to be lifted or rescinded, the Office of the Navajo Tax Commission is hereby authorized to take the following action(s):

1. Sale to satisfy tax liability.

a. Sale of fuel or property after 15 days. Unless proof is presented to the Office of the Navajo Tax Commission within 15 calendar days of impoundment under § 918(D) of this Chapter that all fuel excise tax or taxes due on the impounded fuel, or due on any fuel to which the impounded personal property relates, have been paid in full, the impounded fuel and/or property may be sold by the Office of the Navajo Tax Commission to satisfy any unpaid and outstanding fuel excise tax or taxes owed.

b. Return of excess revenue from sale. Any amount of fuel and/or property remaining after such sale shall be returned to the person(s) from whom it was impounded within 10 working days of the final date of such sale. In lieu thereof, the Office of the Navajo Tax Commission may, in its discretion, determine the fair market value of such fuel and/or property and apply this amount as a credit against any subsequent fuel excise tax or taxes owing, provided that the person(s) to receive such credit has, within 60 days after impoundment, demonstrated full compliance with all applicable provision(s) of this Chapter and corresponding regulations.

2. Civil penalties. In addition to any other applicable penalties provided for in this Chapter, the following penalties shall apply:

a. Standard penalty. A civil penalty of no less than five hundred dollars (\$500.00) and no more than one thousand five hundred dollars (\$1500) for each single and separate violation shall be assessed against any violator(s) for each month, or fraction thereof, in which the violation has occurred. The standard penalty amount shall be specified in regulations.

b. Penalty on each gallon. In addition to any other applicable penalties provided for in this Chapter, a civil penalty of five dollars (\$5.00) per gallon of fuel, or fraction thereof, shall be assessed against any violator(s) for each single and separate violation involving any amount of fuel owned or possessed by, or under the control of, the violator(s) at the time of such violation(s).

G. Appeal. Failure to lift a license suspension, failure to rescind the closure of a refinery or retail facility, or the imposition of a standard or per-gallon penalty by the Office of the Navajo Tax Commission, after conclusion of the preliminary hearing conducted pursuant to § 918(E) of this Chapter, shall be considered an adverse action which may be appealed pursuant to § 131 of the Uniform Tax Administration Statute.

H. Relief of penalties. Upon receipt of an appeal and upon written recommendation of the Director of the Compliance Department of the Office of the Navajo Tax Commission, the Office of the Navajo Tax Commission may in its discretion relieve the appealing person(s) of all or part of the penalties assessed under this Chapter.

I. Regulations. The procedure for the determination, assessment, and/or relief of penalties under this § 918 shall be prescribed and governed by regulations.

History

CAU-85-99, August 26, 1999.

Part IV. Miscellaneous

§ 919. Effective date

This Chapter shall take effect October 1, 1999.

History

CAU-85-99, August 26, 1999.

§ 920. Severability

If any provision of this Chapter, as amended, or its application to any person or factual circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or

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

History

CAU-85-99, August 26, 1999.

§ 921. Repeals

All laws or parts of laws (or amendments 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.

History

CAU-85-99, August 26, 1999.

§ 922. No conflict with Local Governance Act

The provisions of this Chapter and corresponding regulations shall not be construed inconsistent with the Local Governance Act, adopted April 20, 1998 by Navajo Nation Council Resolution No. CAP-34-98.

History

CAU-85-99, August 26, 1999.

§ 923. Disbursements

The net revenue generated from this Chapter, after 1) payment to any state pursuant to a fully executed and valid intergovernmental agreement between the Navajo Nation and such state; 2) allocation to permanent or special revenue funds as required by Navajo Nation law; and 3) allocation to the Tax Administration Suspense Fund, as required by the fiscal policy adopted by the Navajo Tax Commission in accordance with the Uniform Tax Administration Statute, shall be deposited into the Navajo Nation Road Fund.

History

CJY-55-01, July 20, 2001.

CAU-85-99, August 26, 1999.

Chapter 10. Fuel Distributor's Licensing Act [Repealed]

History

Repealed. Pursuant to CAU-85-99, August 26, 1999.

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