

THE NAVAJO NATION



JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

December 31, 2020

Hon. Seth Damon
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CD-96-20, *An Act Relating to Law and Order, Resources and Development, Budget and Finance, Health, Education and Human Services, and Naabik'iyati' Committees and the Navajo Nation Council; Amending Title 24 Chapter 11, Healthy Diné Nation Act of 2014 N.N.C. §§ 1001-1024*

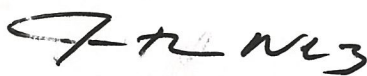
Dear Speaker Damon,

In 2014 concerned citizens lead an effort to change the habits of their fellow citizens due to the high rate of diabetes, obesity, high blood pressure, and heart disease caused by our addiction to unhealthy food and sugary drinks. The 22nd Navajo Nation Council and Navajo President Ben Shelly enacted the Healthy Diné Nation Act of 2014, the first of its kind in the United States, to slow the Navajo Nation's slide down the unacceptable path of unhealthy living. Thank you to the grassroots effort to address this symptom and to the past Navajo leaders for taking the bold step to adopt this unrivaled Act.

With the 24th Navajo Council's passage of the Healthy Diné Act of 2014, this law is made stronger and will have a permanent place in our daily lives. Thank you to the Office of the Navajo Tax Commission and Tax Commissioners for working with this law and collecting to tax that goes out to our communities for Community Wellness Projects. These Projects are intended to improve the lives of community members and get them on the track to healthy living. Thank you to the 24th Navajo Council for your action on CD-96-20.

In the past 10 months we have learned people are more susceptible to the coronavirus if they have underlying health conditions. The Healthy Diné Act of 2014 is one weapon we have to battle this deadly virus. We must work together to keep our Navajo citizens safe, strong, and healthy. We sign CD-96-20 into law knowing the grassroots effort and Navajo leadership have the well-being of all Navajo Nation residents in mind. We are a strong Nation. We are a resilient Nation. We are a healthy Nation.

Sincerely,


Jonathan Nez, President
THE NAVAJO NATION


Myron Lizer, Vice President
THE NAVAJO NATION

RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - SECOND YEAR, 2020

AN ACT

RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, HEALTH, EDUCATION AND HUMAN SERVICES, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING TITLE 24 CHAPTER 11, HEALTHY DINÉ NATION ACT OF 2014 AT 24 N.N.C. §§ 1001 - 1024

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council and is empowered with the authority to review and make recommendations to the Navajo Nation Council on amendments to and enactments in the Navajo Nation Code. 2 N.N.C. §§ 600 (A) and 601 (B)(14).
- B. The Resources and Development Committee is a standing committee of the Navajo Nation Council and is empowered to review and make recommendations to the Navajo Nation Council for taxation proposals affecting business or commercial activities, after consultation with the Navajo Tax Commission. 2 N.N.C. §§ 500 (A) and 501 (B)(4)(d).
- C. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council and is empowered to review and recommend resolutions relating to social services, health, environmental health, education, veterans and veterans' services, employment and labor. 2 N.N.C. §§ 400 (A) and 401 (B)(6)(a).
- D. The Naabik'íyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 164 (A)(9), reviews proposed legislation which requires final action by the Navajo Nation Council.
- E. The Navajo Nation Council must review and approve enactments or amendments of positive law. 2 N.N.C. § 164 (A).

SECTION TWO. FINDINGS

- A. The Navajo Nation Council passed Resolution CN-54-14, the Healthy Diné Nation Act of 2014, on November 17, 2014 and was signed by the Navajo Nation President on November 21, 2014. Resolution CN-54-14 is attached as **Exhibit 2**.

- B. Resolution CN-54-14, the Healthy Diné Nation Act of 2014, was codified in the Navajo Nation Code at Title 24, Taxation, Sections 1001 through 1024.
- C. The Healthy Diné Nation Act of 2014 at 24 N.N.C. § 1003 states: "This tax shall be reviewed at the end of the calendar year 2020 for extension by the Navajo Nation Council."
- D. The Navajo Nation Tax Commission, through Resolution TAX-20-234, Recommends to the Navajo Nation Council the Approval of the Reauthorization and Amendment of the Healthy Diné Nation Act, 24 N.N.C. §§ 1001 et seq. Resolution TAX-20-234 states that "[t]he Act provides, "[t]his tax shall be reviewed at the end of the calendar year 2020 for extension by the Navajo Nation Council," 24 N.N.C. § 1003...."The Navajo Tax Commission further finds that certain provisions of the Act are unclear, such as the definition of "Minimal-to-no nutritional value food items" at § 1007(B), which has created challenges for the Office of the Navajo Tax Commission to effectively administer and enforce the Act;...The Navajo Tax Commission now proposes amendments to the Act to extend the effective date of the Act and to clarify provisions for its effective administration and enforcement[.]" Navajo Nation Tax Commission Resolution TAX-20-234 is attached as **Exhibit 1**.
- E. CN-54-14 Section 1 (A) Findings states that "[a]ccording to Navajo Area Indian Health Service, there are 25,000 Navajos with diabetes and another 75,000 are prediabetic. The Sweet Success data reports the following in 2011: 31% of Navajo pregnancies were complicated (BMI's) in the overweight or obese range. Division of Diabetes Treatment and Prevention, Indian Health Service Headquarters (2012). Unpublished, Centers for Disease Control and Prevention and the Indian Health Service. Division of Diabetes Treatment and Prevention (2012), Annual diabetes clinical outcomes audit and Navajo Sweet Success annual audit (a tracking tool) (2012). Unpublished Navajo Area Indian Health Service, St. Michaels, Arizona."
- F. Further, CN-54-14 Section 1 (C) Findings states that "[a]ccording to the Navajo Area [Indian Health Service, IHS] GPRA Report 2009, of the obesity rate within the seven (7) Navajo Area IHS service units ranged from 23% to 60%, the overweight rate ranged from 17% to 39% for all age groups, and overall, "the highest percentage of patients identified as obese are those ages 25 to 54, the highest service unit is Tuba City with 60% of those with calculated BMIs." Navajo Area Indian Health Service (2009). Navajo Area GPRA report 2009: Government Performance Results Act, (GPRA) program assessment

rating tool (PART) report (07/1/08 - 06/30/09). Unpublished, St. Michaels, Arizona."

- G. Further, CN-54-14 Section 1 (F) Findings states that "[a]ccording to the *American Journal of Clinical Nutrition*, "consumption of sugar-sweetened beverages (SSBs), particularly carbonated soft drinks, may be a key contributor of the epidemic of overweight and obesity, by virtue of these beverages' high added sugar content, low satiety, and incomplete compensation for total energy." There is a "positive association between greater intakes of SSBs and weight gain and obesity in both children and adults" and the "weight of epidemiologic and experimental evidence indicates that a greater consumption of SSBs is associated with weight gain and obesity." There is "sufficient evidence [that] exists for public health strategies to discourage consumption of sugary drinks as part of a healthy lifestyle." Malik, Vasanti S., Schulze, Mattias B., and Hu, Frank B. (2006). Intake of sugar-sweetened beverages and weight gain: a systematic review. *American Journal of Clinical Nutrition*. Aug. 2006; 84(2): 274-228.<http://ajcn.nutrition.org/content/84/2/274.long>"
- H. The Navajo Nation Council finds that the Healthy Diné Nation Act of 2014 should be extended and amended to clarify provisions for its effective administration and enforcement.

SECTION THREE. AMENDING TITLE 24, CHAPTER 11, HEALTHY DINÉ NATION ACT OF 2014

- A. The Navajo Nation hereby amends the Title 24 as follows:

**NAVAJO NATION CODE ANNOTATED
TITLE 24. TAXATION
CHAPTER 11. HEALTHY DINÉ NATION ACT OF 2014**

~~§1001~~ 1101. Short title

The tax imposed by this Chapter shall be called the "Healthy Diné Nation Act of 2014".

~~§1002~~ 1102. Purpose

The Navajo Nation Council hereby enacts this tax for the privilege of engaging in retail 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.

§1003 1103. 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 from all ~~minimal-to-no nutritional value food items~~ "Unhealthy Foods and Beverages" sold for a period (the "Unhealthy Gross Receipts"), and then multiplying the Unhealthy Gross Receipts ~~those gross receipts from all minimal-to-no nutritional value food items sold~~ by the applicable tax rate. This tax shall be reviewed at the end of the calendar year 2020 for extension by the ~~Navajo Nation Council~~.

§1004 1104. 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~~ Consideration from the sale of ~~minimal-to-no nutritional value food items~~ Unhealthy Foods and Beverages.

§1005 1105. Rate of Tax

The tax rate shall be two percent (2%) of a Person's Unhealthy Gross Receipts ~~all minimal-to-no nutritional value food item(s) sold~~ (.02 x Unhealthy Gross Receipts ~~all minimal-to-no nutritional value food item(s) sold~~).

§1006 1106. Administration

All provisions of the Uniform Tax Administration Statute apply to this Chapter. The Office of the Navajo Tax Commission is charged with the administration of this tax. The Office of Navajo Tax Commission shall retain five percent (5%) of all tax revenue collected under this Chapter as a fee to offset the costs of administration.

§1007 1107. 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. "Candy" means a preparation of sugar, honey, molasses, fructose, syrup, or other natural or artificial sweeteners and flavorings, including in combination with chocolate, fruits, nuts, popcorn, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" includes but is not limited to the following sweetened confectionery

snack items: rock candy, powdered candy (e.g. pixie sticks), gel candies, chewing gum (excluding nicotine gum); chocolates; candy bars; bonbons; gum drops; jellies and gummies; jelly beans; imperials; caramels; lollipops; stick candy; hard candy and lozenges (excluding cough drops and nicotine lozenges); taffies; candy wafers; fudges; Italian creams; nougats; nut brittle; chocolate or sugar covered fruits and nuts; glazed or candied fruits and nuts; fruit roll-ups; sweetened popcorn; marshmallows; licorice; cereals and cereal products mixed with or covered with molasses, sugar or other sweetening agent; and all similar sweets however designated. "Candy" shall not include any preparation requiring refrigeration.

B. "Chips" means any type of prepackaged snack food high in sodium and saturated fat, that is fried, baked, toasted, or dried. "Chips" are typically crispy, savory, and salty, and include but are not limited to: potato chips; tortilla chips; corn chips; vegetable or root chips; pita chips; cheese puffs or curls; pretzels; and all similar crispy snack foods however designated.

AC. "Community Wellness Projects" means Navajo Nation Chapter community-based, community-owned wellness projects to address improvements to the physical and social environment of the community because of the need to prevent and/or reduce the incidence of obesity and Type 2 Diabetes Mellitus. Projects may include: farming and vegetable gardens; greenhouses; farmers' markets; healthy convenience stores; clean water; clean communities; wellness/exercise equipment and supplies; skate parks; health classes; parks; traditional, intergenerational, and contemporary wellness; traditional and non-traditional healthy food preparation classes; food processing and storage facilities; health food initiatives; community food cooperatives; playgrounds; basketball courts; walking, running, biking trails; picnic grounds, swimming pools; emergency preparedness; agricultural, recreational, health, youth clubs; library; Navajo traditional craft classes, equine therapy, health coaching; and any other community-based wellness projects to address improvements to physical and social environment of the community that are planned, implemented, directed, and reported by members of the Navajo Nation communities.

D. "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.

E. "Energy Drinks" means both carbonated and non-carbonated pre-packaged beverages containing stimulant drugs, including but not limited to stimulants such as caffeine, which are marketed to provide an extra boost in energy, promote wakefulness, maintain alertness, and provide cognitive and mood enhancement; and all similar articles however designated.

F. ~~B. xi.~~ "Frozen Desserts" means any sweet food or beverage item made by freezing liquid or semisolids, based on naturally and/or artificially flavored water, fruit purees, dairy or dairy substitutes, or custards, which may be combined with fruits, nuts, candy, sweets, or other ingredients. "Frozen Desserts" shall include, but not be limited to prepackaged and non-prepackaged: ice cream (and novelties containing ice cream such as ice cream sandwiches, popsicles, cones, cakes, and milkshakes); frozen custard; frozen yogurt; gelato; sherbet; sorbet; slushies; Italian ices; snow-cones; shakes; pudding popsicles; fruit popsicles containing less than 100% Natural Fruit Juice; and all similar articles however designated. "Frozen Desserts" shall not include all natural fruit and/or vegetable smoothies provided they are comprised solely of fruits and/or vegetables, and may contain healthy additives such as: yogurt, milk; vitamins and minerals; or protein powder.

G. "Unhealthy 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 of Unhealthy Food and Beverages, whether for profit or not, conducted wholly or partially within the Navajo Nation.

H. "Navajo Nation" means all areas within the territorial jurisdiction of the Navajo Nation government as defined by 7 N.N.C. § 254.

I. "Non-Prepackaged" means goods produced at the retail location or eating establishment.

J. "Prepackaged" means commercially produced and packaged/wrapped/sealed food goods ready for retail sale and consumption.

K. "Sweetened Baked Goods" means baked or fried food products that are high in saturated fat and/or sugar, may contain flour, eggs, dairy, shortening, oil, butter, baking powder, sugar or other sweeteners, natural or artificial flavorings, and which are prepackaged and non-prepackaged. These include but are not limited to: baked or fried dough; sweet breads; sweet rolls and buns; biscuits; bagels; croissants; cakes; pies; muffins; cookies; brownies; donuts; tarts; flans; tortes; bars; scones; danish; pastries; and all similar sweetened baked foods however designated; and mixes for the above items. This shall not include the following items if unsweetened: breads; rolls; buns; English muffins; bagels; biscuits; croissants; tortillas; and all similar unsweetened baked breads however designated.

L B. i. "Sweetened Beverages" means a beverage nonalcoholic drinks that are sweetened with sugar or other natural and artificial sweeteners, including calorie free/diet sweeteners, whether carbonated or noncarbonated, in any form, sold for human consumption. It shall include beverages in bottles or cans or served from a fountain dispenser or other source, such as: soda; sweetened flavored water; sports drinks; Energy Drinks; fountain drinks; iced pre-sweetened coffee; iced and tea; flavored drinks; sweetened flavored milk drinks (such as chocolate milk); milkshakes, slushies, and other beverages made of Frozen Desserts; juice drinks containing sugar with less than 100 percent (100%) Natural Fruit Juice, natural and/or Vegetable Juice, fruit juice, or vegetable juice; a Powder or Base Product as a liquid for sale. It shall not include: alcohol; baby formula; plain milk without sweeteners or flavoring; yogurt based drinks; soy milk; rice milk; almond milk; flavored and unflavored water without sweetener; protein drinks and powders, and other formulated food intended as a meal replacement;

M B. "Minimal to no nutritional value food Unhealthy Foods and Beverages" means Candy, Chips, Sweetened Baked Goods, Frozen Desserts, and Sweetened Beverages, and such other foods and beverages as the Navajo Tax Commission may designate as unhealthy from time to time in the Tax Regulations and prepackaged and non-prepackaged snacks stripped of essential nutrients and high in salt, saturated fat, and sugar including sweetened beverages, sweets, chips, and crisps.

~~ii. "Sweets" means any preparation that has a high content of sugar, sometimes in combination with flour, milk, butter, shortening, eggs, dried fruits, nuts, etc., such as candy, frozen desserts, pastries, pudding and gelatin based desserts or baked and fried goods.~~

~~iii. "Snack chips and Crisps" (sodium and saturated fat) means crispy type snack foods that are often fried, baked, or toasted, such as potato chips, tortilla chips, pita chips, or cheese puffs that are high in sodium and fat.~~

~~iv. "Sugar" includes sugar confections but not limited to sucrose, dextrose fructose, corn syrup, high fructose corn syrup, dextrin, galactose, glucose, honey, lactose, fructose, other processed caloric sweeteners, and those derived from fruit juice.~~

~~v. "Corn syrup" means syrup made from cornstarch, consisting of dextrose, maltose and dextrans.~~

~~N-B. vi. "Sweetener" includes natural sweeteners such as sugar, syrups, honey, and agave, as well as artificial sweeteners, which includes such as aspartame, saccharin, sucralose, stevia, cyclamate, xylitol, mogrosides, and many others.~~

~~O B. vii. "Natural fFruit jJuice or fFruit jJuice" means the original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of fruit juice concentrate of the liquid resulting from the restoration of fruit concentrate or the liquid resulting from the restoration of water to dehydrated fruit juice.~~

~~P B. viii. "Natural vVegetable jJuice or vVegetable jJuice" means the original liquid resulting from the pressing of one or more vegetables. Liquid resulting from the reconstitution of vegetable juice concentrate or the liquid resulting from the restoration of water to dehydrated vegetable juice.~~

~~Q B. ix. "Powder or bBase pProduct" means a solid mixture of basic ingredients, including sugar, used in making, mixing or compounding soft drinks by mixing the powder of other base product with water, ice syrup, simple syrup, fruits, vegetables, fruit juice or any other product suitable to make a sweetened beverage.~~

- x. ~~"Candy" means snacks prepared of sugar, honey, salt, saturated fat, other natural or artificial sweeteners in combination with chocolate; dried fruits; fudge; marshmallows; nuts; mints; peanut brittle; white flour; other ingredients or flavorings in many forms such as soft, hard, bars, drops, liquid, spray, floss, carbonated, crystallized, tape, paper, thread, chewy, jelly, gum, powder or pieces.~~
- xii. ~~"Pastries" consist of any mixed, baked, or fried products made primarily but not exclusively from any form of flour, sugar, artificial sweeteners, dairy, shortening, oil, butter, baking powder, nuts, fruits, eggs, jelly, and other filling ingredients.~~
- xiii. ~~"Pudding and gelatin based desserts" means any soft, colorful or colorless, sweet preparation based, which could include dairy, eggs, sugar, or other sweeteners, collagen, cornstarch, or any other flavorings.~~
- xiv. ~~"Baked and fried goods" means baked or fried dough, batter, mixes, and decoration products such as cakes, cookies, and pastries that are high in saturated fat and/or sugar.~~

§1008 1108. Navajo Nation Government

- A. Sales by enterprises and other business entities 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.

§1009. Reserved

§1109. Exemptions and Exclusions

- A. The tax imposed by this Chapter does not apply to Unhealthy Gross Receipts generated directly by the following:
1. Sales for resale;
 2. Sales, other than sales from an unrelated trade or business as defined in §§ 511 - 513 of the Internal

Revenue Code, 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 Code at the time of sale;

3. Sales by facilities engaged in childcare, foster care or adoption placement, or battered families and homeless shelters;
4. Sales by itinerant salespersons;
5. Occasional sales by persons who are not regularly engaged in the business of selling personal or real property or services, which total less than five thousand (\$5,000) dollars per calendar year;
6. Sales by educational institutions, including primary and secondary schools, colleges, vocational, and job training programs;
7. Sales by hospitals and health-care organizations or facilities;
8. Sales from coin-operated vending machines of any type;
9. Sales paid for by coupons issued by the United States Department of Agriculture under the Food Stamp Act of 1977 (P.L. 95-113);
10. Sales paid for by vouchers issued under § 17 of the Child Nutrition Act (P.L. 95-627 and P.L. 99-669);

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

§1110. Credits

There shall be no credits. A person shall not be permitted to 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 sub-unit.

§1011. Reserved

§1012-1111. 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 February 15, May 15, August 15, and November 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 signed by a specified person.
- C. No return need be filed by any person who is exempt under ~~§609~~ §1109, 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.~~

~~§1013~~ 1112. 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.

~~§1014~~ 1113. Recordkeeping

- 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 for which the records relate.

~~§1015~~ 1114. Reserved

~~§1016~~ 1115. Reserved

~~§1017~~. Reserved

~~§1018. Reserved~~

~~§1019. Reserved~~

§1020 1116. 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. One hundred percent (100%) of the Healthy Diné Nation Act of 2014 revenue collected from retail establishments located in the Navajo Nation shall be deposited into the Community Wellness Development Projects Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee and administered by the Division of Community Development; and
- B. The Division shall disburse the funds to the chapters as seed money for leverage to initiate, match, and/or improve community wellness projects.

~~§1021~~ 1117. 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.

§1022 1118. 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.

~~§1023. Reserved~~

§1024 1119. 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.

SECTION FOUR. CODIFICATION

The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

SECTION FIVE. SAVINGS CLAUSE

Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

SECTION SIX. EFFECTIVE DATE

Amendments enacted herein shall be effective pursuant to 2 N.N.C. § 221 (B).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 21 in Favor, and 00 Opposed, on this 23rd day of December 2020.



Honorable Seth Damon, Speaker
24th Navajo Nation Council

12.29.2020

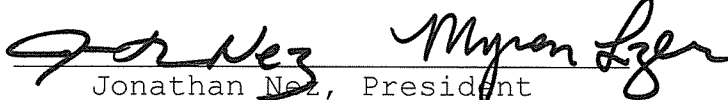
DATE

Motion: Honorable Rickie Nez
Second: Honorable Thomas Walker, Jr.

Speaker Seth Damon not voting

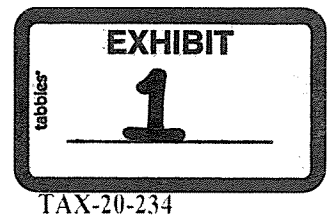
ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this 31 day of December, 2020.


Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this _____ day of _____, 20____ for the reason(s) expressed in the attached letter to the Speaker.

Jonathan Nez, President
Navajo Nation



RESOLUTION OF THE NAVAJO TAX COMMISSION

**RECOMMENDING TO THE NAVAJO NATION COUNCIL
THE APPROVAL OF THE REAUTHORIZATION AND AMENDMENT OF
THE HEALTHY DINÉ NATION ACT, 24 N.N.C. §§ 1001 *ET SEQ.***

WHEREAS:

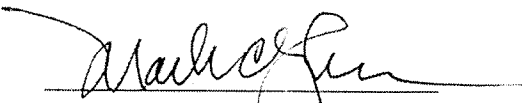
1. The Navajo Tax Commission is established as a part of the Executive Branch of the Navajo Nation government, and is empowered to review and study all sources of wealth and income within the Navajo Nation and the possible revenues from the taxation of those sources, in order to develop an appropriate, comprehensive system of taxation, 2 N.N.C. §§ 3351 and 3353(A)(1); and
2. The Navajo Nation Council enacted the Healthy Diné Nation Act of 2014 (the "Act"), pursuant to Resolution No. CN-54-14, codified at 24 N.N.C. § 1001 *et seq.*; and
3. The Act provides, "[t]his tax shall be reviewed at the end of the calendar year 2020 for extension by the Navajo Nation Council," 24 N.N.C. § 1003; and
4. The Navajo Tax Commission finds that 24 N.N.C. § 1003 means that the Act will expire at the end of calendar year 2020 and that Council should now review the Act for extension; and
5. The Navajo Tax Commission further finds that certain provisions of the Act are unclear, such as the definition of "Minimal-to-no nutritional value food items" at § 1007(B), which has created challenges for the Office of the Navajo Tax Commission to effectively administer and enforce the Act; and
6. The Navajo Tax Commission now proposes amendments to the Act to extend the effective date of the Act and to clarify provisions for its effective administration and enforcement, attached as Exhibit "A", and the Navajo Tax Commission recommends to the Navajo Nation Council the approval of the proposed amendments to the Act.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tax Commission hereby proposes certain amendments to the Act, attached as Exhibit "A".
2. The Navajo Tax Commission hereby recommends that the Navajo Nation Council reauthorize the Act and approve the amendments attached as Exhibit "A".

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tax Commission at a duly called meeting in St. Michaels, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 3 in favor and 0 opposed, with 0 abstaining, this 13th day of February, 2020.


Mark Graham, Chairperson
Navajo Tax Commission

Motion: Loretta Largo

Second: Pearline Kirk

- xc. NTC Resolution File
- ONTC Resolution File
- Navajo Nation Department of Justice
- Navajo Nation Office of Legislative Counsel
- The 24th Navajo Nation Council

NAVAJO NATION CODE ANNOTATED

TITLE 24. TAXATION

CHAPTER 11. HEALTHY DINÉ NATION ACT OF 2014 UNHEALTHY FOOD AND
BEVERAGE TAX

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2
3
4
5
6
7
8 **§~~1001~~1101. Short title**

9 The tax imposed by this Chapter shall be called the "~~Healthy Diné Nation Act of~~
10 ~~2014~~Unhealthy Food and Beverage Tax".

11 **§~~1002~~1102. Purpose**

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

16
17 **§~~1003~~1103. Tax Imposed**

18 A tax is hereby imposed on the gross receipts of a person. The tax due for a period is
19 determined by first calculating applicable gross receipts from all ~~minimal to no nutritional~~
20 ~~value food items~~ "Unhealthy Foods and Beverages" sold for a period (the "Unhealthy Gross
21 Receipts"), and then multiplying the Unhealthy Gross Receipts ~~those gross receipts from all~~
22 ~~minimal to no nutritional value food items sold by~~ the applicable tax rate. This tax shall ~~be~~
23 ~~reviewed at the end of the calendar year~~expire on December 31, 2023 for extension unless it is
24 extended by the Navajo Nation Council.

25
26 **§~~1004~~1104. Legal Incidence and Responsibility for Payment**

27 The person liable for the payment of the tax imposed by this Chapter is the person receiving
28 the ~~gross receipts~~Consideration from the sale of ~~minimal to no nutritional value food items~~
29 Unhealthy Foods and Beverages.

1 **§~~1005~~1105. Rate of Tax**

2 The tax rate shall be two percent (2%) of a Person's Unhealthy Gross Receipts ~~all minimal to~~
3 ~~no nutritional value food item(s) sold~~ ~~(.02 x Unhealthy Gross Receipts~~ ~~all minimal to no~~
4 ~~nutritional value food item(s) sold)~~.

5
6 **§~~1006~~1106. Administration**

7 All provisions of the Uniform Tax Administration Statute apply to this Chapter. The Navajo
8 Nation Council charges the Office of the Navajo Tax Commission with the administration of
9 this tax. The Office of Navajo Tax Commission shall retain five percent (5%) of all tax revenue
10 collected under this Chapter as a fee to offset the costs of administration.

11 **§~~1007~~1107. Definitions**

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

14
15 A. "Candy" means a preparation of sugar, honey, molasses, fructose, syrup, or other
16 natural or artificial sweeteners and flavorings, including in combination with chocolate,
17 fruits, nuts, popcorn, or other ingredients or flavorings in the form of bars, drops, or
18 pieces. "Candy" includes but is not limited to the following sweetened confectionery
19 snack items: rock candy, powdered candy (e.g. pixie sticks), gel candies, chewing gum
20 (excluding nicotine gum); chocolates; candy bars; bonbons; gum drops; jellies and
21 gummies; jelly beans; imperials; caramels; lollipops; stick candy; hard candy and
22 lozenges (excluding cough drops and nicotine lozenges); taffies; candy wafers; fudges;
23 Italian creams; nougats; nut brittle; chocolate or sugar covered fruits and nuts; glazed or
24 candied fruits and nuts; fruit roll-ups; sweetened popcorn; marshmallows; licorice;
25 cereals and cereal products mixed with or covered with molasses, sugar or other
26 sweetening agent; and all similar sweets however designated. "Candy" shall not include
27 any preparation requiring refrigeration.

28
29 B. "Chips" means any type of prepackaged snack food high in sodium and saturated
30 fat, that is fried, baked, toasted, or dried. "Chips" are typically crispy, savory, and salty.

1 and include but are not limited to: potato chips; tortilla chips; corn chips; vegetable or
2 root chips; pita chips; cheese puffs or curls; pretzels; and all similar crispy snack foods
3 however designated.

4
5 A.C. "Community Wellness Projects" means Navajo Nation Chapter community-
6 based, community-owned wellness projects to address improvements to the physical and
7 social environment of the community because of the need to prevent and/or reduce
8 the incidence of obesity and Type 2 Diabetes Mellitus and to improve the overall health
9 of the Navajo People. Projects may include: farming and vegetable gardens;
10 greenhouses; farmers' markets; healthy convenience stores; clean water; clean
11 communities; wellness/exercise equipment and supplies; skate parks; health classes;
12 parks; traditional, intergenerational, and contemporary wellness; traditional and non-
13 traditional healthy food preparation classes; food processing and storage facilities; health
14 food initiatives; community food cooperatives; playgrounds; basketball courts; walking,
15 running, biking trails; picnic grounds, swimming pools; emergency preparedness;
16 agricultural, recreational, health, youth clubs; library; Navajo traditional craft classes,
17 equine therapy, health coaching; and any other community-based wellness projects to
18 address improvements to physical and social environment of the community that are
19 planned, implemented, directed, and reported by members of the Navajo Nation
20 communities.

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

25
26 E. "Energy Drinks" means both carbonated and non-carbonated pre-packaged
27 beverages containing stimulant drugs, including but not limited to stimulants such as
28 caffeine, which are marketed to provide an extra boost in energy, promote wakefulness,
29 maintain alertness, and provide cognitive and mood enhancement; and all similar articles
30 however designated.

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1 F.xi. "Frozen Desserts" means any sweet food or beverage item made by freezing
2 liquid or semisolids, based on naturally and/or artificially flavored water, fruit purees,
3 dairy or diary substitutes, or custards, which may be combined with fruits, nuts, candy,
4 sweets, or other ingredients. "Frozen Desserts" shall include, but not be limited to
5 prepackaged and non-prepackaged: ice cream (and novelties containing ice cream such
6 as ice cream sandwiches, popsicles, cones, cakes, and milkshakes); frozen custard;
7 frozen yogurt; gelato; sherbet; sorbet; slushies; Italian ices; snow-cones; shakes; pudding
8 popsicles; fruit popsicles containing less than 100% Natural Fruit Juice; and all similar
9 articles however designated. "Frozen Desserts" shall not include all natural fruit and/or
10 vegetable smoothies provided they are comprised solely of fruits and/or vegetables, and
11 may contain healthy additives such as: yogurt, milk; vitamins and minerals; or protein
12 powder.

13 G. "Unhealthy Gross Receipts" means the total amount of money, credit, or any
14 other pecuniary benefit or advantage, plus the fair market value of any other
15 Consideration, which is actually received during any period by any person from the sale
16 of Unhealthy Food and Beverages, whether for profit or not, conducted wholly or
17 partially within the Navajo Nation.

18
19 H. "Navajo Nation" means all areas within the territorial jurisdiction of the Navajo
20 Nation government as defined by 7 N.N.C. § 254.

21
22 I. "Non-Prepackaged" means goods produced at the retail location or eating
23 establishment.

24
25 J. "Prepackaged" means commercially produced and packaged/wrapped/sealed
26 food goods ready for retail sale and consumption.

27
28 K. "Sweetened Baked Goods" means baked or fried food products that are high in
29 saturated fat and/or sugar, may contain flour, eggs, dairy, shortening, oil, butter, baking
30 powder, sugar or other sweeteners, natural or artificial flavorings, and which are

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EXHIBIT "A"

1 prepackaged and non-prepackaged. These include but are not limited to: baked or fried
2 dough; sweet breads; sweet rolls and buns; biscuits; bagels; croissants; cakes; pies;
3 muffins; cookies; brownies; donuts; tarts; flans; tortes; bars; scones; danish; pastries;
4 and all similar sweetened baked foods however designated; and mixes for the above
5 items. This shall not include the following items if unsweetened: breads; rolls; buns;
6 English muffins; bagels; biscuits; croissants; tortillas; and all similar unsweetened baked
7 breads however designated.

8
9 hL. "Sweetened Beverages" means a beverage nonalcoholic drinks that are
10 sweetened with sugar or other natural and artificial sweeteners, including calorie
11 free/diet sweeteners, whether carbonated or noncarbonated, in any form, sold for human
12 consumption. It shall include beverages in bottles or cans or served from a fountain
13 dispenser or other source, such as: soda; sweetened flavored water; sports drinks;
14 eEnergy dDrinks; fountain drinks; ~~iced~~ pre-sweetened coffee; ~~iced~~ and tea; flavored
15 drinks; sweetened flavored milk drinks (such as chocolate milk); milkshakes, slushies,
16 and other beverages made of Frozen Desserts; juice drinks containing sugar with less
17 than 100 percent (100%) nNatural fFruit jJuice, natural and/or vVegetable jJuice, fruit
18 juice, or vegetable juice; a pPowder; or hBase pProduct as a liquid for sale. It shall not
19 include: alcohol; baby formula; plain milk without sweeteners or flavoring; yogurt based
20 drinks; soy milk; rice milk; almond milk; flavored and unflavored water without
21 sweetener; protein drinks and powders, and other formulated food intended as a meal
22 replacement;

23 BM. "Minimal to no nutritional value food Unhealthy Foods and Beverages" means
24 Candy, Chips, Sweetened Baked Goods, Frozen Desserts, and Ssweetened Beverages,
25 and such other foods and beverages as the Navajo Tax Commission may designate as
26 unhealthy from time to time in the Tax Regulations and ~~prepackaged and non-~~
27 prepackaged snacks stripped of essential nutrients and high in salt, saturated fat, and
28 sugar including sweetened beverages, sweets, chips, and crisps.

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1 ii. ~~“Sweets” means any preparation that has a high content of sugar,~~
2 ~~sometimes in combination with flour, milk, butter, shortening, eggs, dried fruits,~~
3 ~~nuts, etc., such as candy, frozen desserts, pastries, pudding and gelatin-based~~
4 ~~desserts or baked and fried goods.~~

5
6 iii. ~~“Snack chips and Crisps” (sodium and saturated fat) means crispy-type~~
7 ~~snack foods that are often fried, baked, or toasted, such as potato chips, tortilla~~
8 ~~chips, pita chips, or cheese puffs that are high in sodium and fat.~~

9
10 iv. ~~“Sugar” includes sugar confections but not limited to sucrose, dextrose~~
11 ~~fructose, corn syrup, high fructose corn syrup, dextrin, galactose, glucose, honey,~~
12 ~~lactose, fructose, other processed calorie sweeteners, and those derived from fruit~~
13 ~~juice.~~

14
15 v. ~~“Corn syrup” means syrup made from cornstarch, consisting of dextrose,~~
16 ~~maltose and dextrans.~~

17
18 vi. ~~_____~~

19 N. “Sweetener” includes natural sweeteners such as sugar, syrups, honey, and
20 agave, as well as artificial sweeteners, ~~which includes such as~~ aspartame, saccharin,
21 sucralose, stevia, cyclamate, xylitol, mogrosides, and many others.

22
23 vii. ~~_____~~

24 O. “Natural ~~f~~Fruit ~~j~~Juice or ~~f~~Fruit ~~j~~Juice” means the original liquid resulting from
25 the pressing of fruit, the liquid resulting from the reconstitution of fruit juice concentrate
26 of the liquid resulting from the restoration of fruit concentrate or the liquid resulting
27 from the restoration of water to dehydrated fruit juice.

28
29 viii. ~~_____~~

30 P. “Natural ~~v~~Vegetable ~~j~~Juice or ~~v~~Vegetable ~~j~~Juice” means the original liquid
 resulting from the pressing of one or more vegetables. Liquid resulting from the

1 reconstitution of vegetable juice concentrate or the liquid resulting from the restoration
2 of water to dehydrated vegetable juice.

3
4 ix. —

5 Q. "Powder or ~~b~~Base ~~p~~Product" means a solid mixture of basic ingredients,
6 including sugar, used in making, mixing or compounding soft drinks by mixing the
7 powder of other base product with water, ice syrup, simple syrup, fruits, vegetables, fruit
8 juice or any other product suitable to make a sweetened beverage.

9
10 ~~"Candy" means snacks prepared of sugar, honey, salt, saturated fat, other natural~~
11 ~~or artificial sweeteners in combination with chocolate; dried fruits; fudge;~~
12 ~~marshmallows; nuts; mints; peanut brittle; white flour; other ingredients or~~
13 ~~flavorings in many forms such as soft, hard, bars, drops, liquid, spray, floss,~~
14 ~~carbonated, crystallized, tape, paper, thread, chewy, jelly, gum, powder or pieces.~~

15 ~~"Pastries" consist of any mixed, baked, or fried products made primarily but not~~
16 ~~exclusively from any form of flour, sugar, artificial sweeteners, dairy, shortening,~~
17 ~~oil, butter, baking powder, nuts, fruits, eggs, jelly, and other filling ingredients.~~

18
19 ~~xiii. "Pudding and gelatin based desserts" means any soft, colorful or~~
20 ~~colorless, sweet preparation based, which could include dairy, eggs, sugar, or~~
21 ~~other sweeteners, collagen, cornstarch, or any other flavorings.~~

22
23 ~~"Baked and fried goods" means baked or fried dough, batter, mixes, and~~
24 ~~decoration products such as cakes, cookies, and pastries that are high in saturated~~
25 ~~fat and/or sugar.~~

26
27 **§10081108. Navajo Nation Government**

28 A. Sales by enterprises and other business entities~~corporations~~ owned by the Navajo
29 Nation government or any political subdivision thereof shall be fully subject to the tax
30 imposed by this Chapter.

1
2 B. Sales by the government of the Navajo Nation, or political subdivisions or
3 enterprises thereof, shall be subject to the tax imposed by this Chapter.

4
5 ~~§1009. Reserved~~

6
7 §1109. Exemptions and Exclusions

8 A. The tax imposed by this Chapter does not apply to Unhealthy Gross Receipts generated
9 directly by the following:

- 10 1. Sales for resale;
- 11 2. Sales, other than sales from an unrelated trade or business as defined in §§ 511 –
12 513 of the Internal Revenue Code, by any person operating exclusively for non-
13 profit or charitable purposes, and recognized as such pursuant to § 501(C)(3) and
14 501(C)(19) of the United States Internal Revenue Code at the time of sale;
- 15 3. Sales by facilities engaged in childcare, foster care or adoption placement, or
16 battered families and homeless shelters;
- 17 4. Sales by itinerant salespersons;
- 18 5. Occasional sales by persons who are not regularly engaged in the business of
19 selling personal or real property or services, which total less than five thousand
20 (\$5,000) dollars per calendar year;
- 21 6. Sales by educational institutions, including primary and secondary schools,
22 colleges, vocational, and job training programs;
- 23 7. Sales by hospitals and health-care organizations or facilities;
- 24 8. Sales from coin-operated vending machines of any type;
- 25 9. Sales paid for by coupons issued by the United States Department of Agriculture
26 under the Food Stamp Act of 1977 (P.L. 95-113);
- 27 10. Sales paid for by vouchers issued under § 17 of the Child Nutrition Act (P.L. 95-
28 627 and P.L. 99-669);

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

1 **§1110. Credits**

2 There shall be no credits. A person shall not be permitted to take a credit against the tax
3 imposed by this Chapter for taxes paid pursuant to any nondiscriminatory excise tax imposed by
4 any duly established township or local government sub-unit.

5
6 ~~§1011.~~ **Reserved**

7
8 ~~§1012~~**1111. Filing of Return**

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

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

17
18 C. No return need be filed by any person who is exempt under ~~§609~~ §1109,
19 provided that the Office of the Navajo Tax Commission may require such person to file
20 the information necessary to establish its exempt status.

21
22 ~~D. In the case of the exemption provided for in §609(A), the filing by a person of a~~
23 ~~proper certificate of exemption with the Office of the Navajo Tax /Commission shall~~
24 ~~constitute a claim for exemption.~~

25
26 ~~§1013~~**1112. Payment of Tax**

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

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~~§1014~~1113. **Recordkeeping**

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 for which the records relate.

~~§1015~~ 1114. **Reserved**

~~§1016~~ 1115. **Reserved**

~~§1017~~. **Reserved**

~~§1018~~. **Reserved**

~~§1019~~. **Reserved**

~~§1020~~1116. **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. One hundred percent (100%) of the ~~Healthy Diné Nation Act of 2014~~Unhealthy Food and Beverage Tax revenue collected from retail establishments located in the Navajo Nation shall be deposited into the Community Wellness Development Projects Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee and administered by the Division of Community Development; and

B. The Division shall disburse the funds to the chapters as seed money for leverage to initiate, match, and/or improve community wellness projects.

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§1021117. 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.

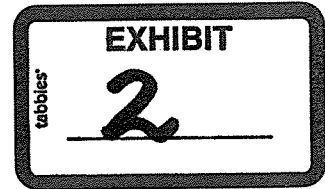
§1022118. Severability

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.

~~§1023. Reserved~~

§1024119. 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.



RESOLUTION OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL—FOURTH YEAR, 2014

AN ACT

RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'IYATI' AND NAVAJO NATION COUNCIL; AMENDING TITLE 24 OF THE NAVAJO NATION CODE BY ENACTING THE HEALTHY DINÉ NATION ACT OF 2014

BE IT ENACTED:

Section 1. Findings

The Navajo Nation finds the following with respect to this resolution.

- A. According to Navajo Area Indian Health Service, there are 25,000 Navajos with diabetes and another 75,000 are pre-diabetic. The Sweet Success data reports the following in 2011: 31% of Navajo pregnancies were complicated (BMI's) in the overweight or obese range. Division of Diabetes Treatment and Prevention, Indian Health Service Headquarters (2012). Unpublished, Centers for Disease Control and Prevention and the Indian Health Service. Division of Diabetes Treatment and Prevention (2012), Annual diabetes clinical outcomes audit and Navajo sweet success annual audit (a tracking tool) (2012). Unpublished, Navajo Area Indian Health Service, St. Michaels, Arizona.
- B. At an average, it costs over \$13,000 per person annually to treat diabetes. The cost for treating diabetes related complications can exceed \$100,000 per person. O'Connell JM, Wilson C, Manson SM, & Acton KJ (2012). The costs of treating American Indian adults with diabetes within the Indian Health Service, research and practice. *American Indian Journal of Public Health*.

- C. According to the Navajo Area [Indian Health Service, IHS] *GPRA Report 2009*, of the obesity rate within the seven (7) Navajo Area IHS service units ranged from 23% to 60%, the overweight rate ranged from 17% to 39% for all age groups, and overall, "the highest percentage of patients identified as obese are those ages 25 to 54, the highest service unit is Tuba City with 60 % of those with calculated BMIs." Navajo Area Indian Health Service (2009). Navajo area GPRA report 2009: government performance results act, (GPRA) program assessment rating tool (PART) report (07/1/08-06/30/09). Unpublished, St. Michaels, Arizona.
- D. According to the *Center of Disease Control and Prevention*, "each year, more than 13,000 young people are diagnosed with type 1 diabetes" and "health care providers are finding more and more children with type 2 diabetes, a disease usually diagnosed in adults aged 40 years or older." For only American Indians, there is a "statistically significant increase in the prevalence of type 2 diabetes among children and adolescents." Center of Disease Control and Prevention (2013). Children and diabetes. <http://www.cdc.gov/diabetes/projects/cda2.htm>
- E. According to the *Mayo Clinic*, primary risk factors of Type 2 Diabetes in children are overweight, obesity, inactivity, race, and family history. Symptoms can include increased thirst, increased urination, increased hunger, weight loss, fatigue, blurred vision, slow-healing sores or frequent infections, areas of and darkened skin. Complications can include heart and blood vessel disease, increased risk cardiovascular problems, including heart disease, stroke, high cholesterol and high blood pressure, nerve damage (neuropathy), kidney damage (nephropathy), eye damage, foot damage, and skin conditions. Mayo Clinic (2014). Type 2 diabetes in children. <http://www.mayoclinic.org/diseases-conditions/type-2-diabetes-in-children/basics/definition/con-20030124>
- F. According to the *American Journal of Clinical Nutrition*, "consumption of sugar-sweetened beverages (SSBs), particularly carbonated soft drinks, may be a key contributor to the epidemic of overweight and obesity, by

virtue of these beverages' high added sugar content, low satiety, and incomplete compensation for total energy." There is a "positive association between greater intakes of SSBs and weight gain and obesity in both children and adults" and the "weight of epidemiologic and experimental evidence indicates that a greater consumption of SSBs is associated with weight gain and obesity." There is "sufficient evidence [that] exists for public health strategies to discourage consumption of sugary drinks as part of a healthy lifestyle." Malik, Vasanti S., Schulze, Matthias B., and Hu, Frank B. (2006). Intake of sugar-sweetened beverages and weight gain: a systematic review. *American Journal of Clinical Nutrition*. Aug 2006; 84(2): 274-288. <http://ajcn.nutrition.org/content/84/2/274.long>

- G. According to the Navajo Nation Human Rights Commission, "the right to food is a human right recognized under international law that protects the right of all human beings to feed themselves in dignity, either by producing their food or by purchasing it." Resolution NNHRCFeb-02-09.
- H. According to the *New York Times Magazine* cover story "The Extraordinary Science of Addictive Junk Food" states that people are "addicted to junk food" and "this addiction will only deepen as the food industry continues to find new ways to get people hooked on foods that are convenient and inexpensive." Kalaidis, Jen. (2013). Should the U.S. adopt a fat tax? *The Week*.
- I. According to the *British Medical Journal*, economists agree that "government intervention, including taxation, is justified when the market fails to provide the optimum amount of a good for society's well-being." Kalaidis, Jen. (2013). Should the U.S. adopt a fat tax? *The Week*.
- J. According to the *Diné Food Sovereignty* report, 74% of respondents "think health problems in [their] communities are caused by a lack of healthy and nutritious food." Diné Policy Institute (2014). *Diné food sovereignty: a report on the Navajo Nation food system and the case to rebuild a self-sufficient food system for the Diné people*. [Http://www.dinecollege.edu/institutes/DPI/Docs/dpi-food-sovereignty-report.pdf](http://www.dinecollege.edu/institutes/DPI/Docs/dpi-food-sovereignty-report.pdf)

- K. According to the *Diné Food Sovereignty* report, "the United States Department of Agriculture identifies nearly all of the Navajo Nation's 27,000 square miles as a food desert," which is defined as "an area, either urban or rural, without access to affordable fresh and healthy foods" and where "heavily processed foods are often readily available." Diné Policy Institute (2014). *Diné food sovereignty: a report on the Navajo Nation food system and the case to rebuild a self-sufficient food system for the Diné people.* <http://www.dinecollege.edu/institutes/DPI/Docs/dpi-food-sovereignty-report.pdf>
- L. According to the *Tsehootsooi Medical Center Community Health Needs Assessment*, 86.74% of respondents recommended facilities needed in their community: walking trails, 42.54%; recreational, 60.87%; playground, 46.87%; and other, 8.47%. Health programs were recommended by 88.77% of the respondents with the following: CPR classes, 33.89%; cultural classes/resources, 34.35%; fitness instruction, 52.95%; health education/programs, 50.09%; nutrition classes, 52.12%; parenting groups, 37.66%; and other, 8.66%. Clichee, Dominic, M. (2013). *Tsehootsooi Medical Center community health needs assessment.* <http://www.fdihb.org/files/downloads/TMC%20CHAH%20v3.2%20without%20implementation%20plans.pdf>
- M. According to the *Chinle Health Council Community Health Assessment*, community respondents identified diabetes, obesity, and unhealthy foods as the top three important health issues in their communities, with diabetes as the number one health issue in the Chinle communities. Respondents identified "Wellness/Health education (Nutrition), Community events, Wellness Center" as the "most important factors for a healthy community." Respondents rated the health of their community with the following "Nutrition/bad food, Exercise, Unidentified illness/sickness/disease." Lynch, Patrick D. & Clichee, Dominic M. (2012). *Chinle Health Council community health assessment.* Unpublished, Chinle Health Council.

- N. The revenue generated from the Healthy Diné Nation Act of 2014 will be earmarked for chapters to plan for community originated wellness projects such as farming and vegetable gardens; greenhouses; farmers' markets; healthy convenience stores; clean water; clean communities; wellness/exercise equipment and supplies; skate parks; health classes; parks; traditional, intergenerational, and contemporary wellness; traditional and non-traditional healthy food preparation classes; food processing and storage facilities; health food initiatives; community food cooperatives; playgrounds; basketball courts; walking, running, biking trails; picnic grounds, swimming pools; emergency preparedness; agricultural, recreational, health, youth clubs; library; Navajo traditional craft classes, equine therapy, health coaching; and any other community-based wellness projects to address improvements to physical and social environment of the community that are planned, implemented, directed, and reported by members of the Navajo Nation communities.
- O. The Healthy Diné Nation Act of 2014 is to take responsibility of our health crisis, to raise awareness of unhealthy foods, to empower everyone to lead productive and healthy lives. This Act will impact physical and social environment where communities are empowered to take positive action; improve local capacity for wellness and improved health; make healthy food available and easily accessible; provide communities with clean water and recycling centers; reduce rates of chronic diseases such as obesity, diabetes, heart diseases, cancer, etc.; preserve Diné tradition, culture, and language; preserve Diné traditional food; maintain a healthy weight; improve academic achievement of healthy children and youth; generate active and healthy communities; foster well-informed, educated communities about health and wellness to make positive, healthy choices, healthy individuals and families; build a healthy, thriving, and productive workforce; promote healthy businesses; reduce health care costs; to save lives and money; and to allow the people to take ownership of healthy initiatives; to protect and preserve our population for future healthy generations.
- P. It is the intent of the Navajo Nation Council, by approving the Healthy Diné Nation Act of 2014 to diminish the human and economic costs of obesity and diabetes on the Navajo

Nation. The intent is to improve health by creating the environment that supports health and wellness with a dedicated revenue source for Community Wellness Projects designed by Navajo Nation Chapters to prevent obesity, Type 2 Diabetes Mellitus, and other such health conditions by discouraging excessive consumption of sweetened beverages and minimal to no nutritional value food items high in sugar, salt, and saturated fat.

- Q. There is public support for the proposed tax on sweetened beverages and minimal-to-no nutritional value food items among communities across the Navajo Nation. Navajo Nation Chapter Resolutions and resolutions from other entities in support of a tax on minimal-to-no nutritional value food items are attached hereto as Exhibit A.
- R. The Navajo Nation finds it is in the best interest of the Navajo Nation to amend Title 24 of the Navajo Nation Code and to enact the Healthy Diné Nation Act of 2014.

Section 2. Amendments to Title 24 of the Navajo Nation Code

The Navajo Nation hereby amends Title 24 of the Navajo Nation Code, 24 N.N.C. §§ 1001-1024, as follows:

**NAVAJO NATION CODE ANNOTATED
TITLE 24. TAXATION
CHAPTER 11. HEALTHY DINÉ NATION ACT OF 2014**

§1001. Short title

The tax imposed by this Chapter shall be called the "Healthy Diné Nation Act of 2014".

§1002. Purpose

The Navajo Nation Council hereby enacts this tax for the privilege of engaging in retail 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.

§1003. Tax Imposed

A tax is hereby imposed on the gross receipts of a retail business person. The tax due for a period is determined by first calculating applicable gross receipts from all minimal-to-no nutritional value food items sold for a period, and then multiplying those gross receipts from all minimal-to-no nutritional value food items sold by the applicable tax rate. This tax shall be reviewed at the end of the calendar year 2034 2020 unless extended for extension by the Navajo Nation Council

§1004. 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 the sale of minimal-to-no nutritional value food item(s).

§1005. Rate of Tax

The rate shall be two percent (2%) of all minimal-to-no nutritional value food item(s) sold (.02 x all minimal-to-no nutritional value food item(s) sold).

§1006. Administration

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

§1007. 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. "Community Wellness Projects" means Navajo Nation Chapter community-based, community-owned wellness projects to address improvements to the physical and social environment of the community because of the need to prevent and/or reduce the incidence of obesity and Type 2 Diabetes Mellitus. Projects may include: farming and vegetable gardens; greenhouses; farmers' markets; healthy convenience stores; clean water; clean communities; wellness/exercise equipment and supplies; skate parks; health classes; parks;

traditional, intergenerational, and contemporary wellness; traditional and non-traditional healthy food preparation classes; food processing and storage facilities; health food initiatives; community food cooperatives; playgrounds; basketball courts; walking, running, biking trails; picnic grounds, swimming pools; emergency preparedness; agricultural, recreational, health, youth clubs; library; Navajo traditional craft classes, equine therapy, health coaching; and any other community-based wellness projects to address improvements to physical and social environment of the community that are planned, implemented, directed, and reported by members of the Navajo Nation communities.

B. "Minimal-to-no nutritional value food" means sweetened beverages and prepackaged and non-prepackaged snacks stripped of essential nutrients and high in salt, saturated fat, and sugar including sweetened beverages, sweets, chips, and crisps.

i. "Sweetened beverages" means a beverage, whether carbonated or noncarbonated in any form sold for human consumption. It shall include: soda; flavored water; sports drinks; energy drinks; fountain drinks; iced coffee; iced tea; flavored drinks; drinks containing sugar with natural fruit juice, natural vegetable juice, fruit juice, or vegetable juice; a powder, or base product as a liquid for sale.

ii. "Sweets" means any preparation that has a high content of sugar, sometimes in combination with flour, milk, butter, shortening, eggs, dried fruits, nuts, etc., such as candy, frozen desserts, pastries, pudding and gelatin based desserts or baked and fried goods.

iii. "Snack chips and Crisps" (sodium and saturated fat) means crispy type snack foods that are often fried, baked, or toasted, such as potato chips, tortilla chips, pita chips, or cheese puffs that are high in sodium and fat.

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iv. "Sugar" includes sugar confections but not limited to sucrose, dextrose fructose, corn syrup, high-fructose corn syrup, dextrin, galactose, glucose, honey, lactose, fructose, other processed caloric sweeteners, and those derived from fruit juice.

v. "Corn syrup" means syrup made from cornstarch, consisting of dextrose, maltose and dextrans.

vi. "Sweetener" includes artificial sweetener, which includes aspartame, saccharin, sucralose, stevia, cyclamate, xylitol, mogrosides, and many others.

vii. "Natural fruit juice or fruit juice" means the original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of fruit juice concentrate of the liquid resulting from the restoration of fruit concentrate or the liquid resulting from the restoration of water to dehydrated fruit juice.

viii. "Natural vegetable juice or vegetable juice" means the original liquid resulting from the pressing of one or more vegetables. Liquid resulting from the reconstitution of vegetable juice concentrate or the liquid resulting from the restoration of water to dehydrated vegetable juice.

ix. "Powder or base product" means a solid mixture of basic ingredients, including sugar, used in making, mixing or compounding soft drinks by mixing the powder of other base product with water, ice

syrup, simple syrup, fruits, vegetables, fruit juice or any other product suitable to make a sweetened beverage.

x. "Candy" means snacks prepared of sugar, honey, salt, saturated fat, other natural or artificial sweeteners in combination with chocolate; dried fruits; fudge; marshmallows; nuts; mints; peanut brittle; white flour; other ingredients or flavorings in many forms such as soft, hard, bars, drops, liquid, spray, floss, carbonated, crystallized, tape, paper, thread, chewy, jelly, gum, powder or pieces.

xi. "Frozen desserts" means any sweet item made by freezing liquid or semisolids, based on naturally and/or artificially flavored water, fruit purees, dairy or dairy substitutes, custards; combined with fruits, nuts, candy, sweets, or other ingredients.

xii. "Pastries" consist of any mixed, baked, or fried products made primarily but not exclusively from any form of flour, sugar, artificial sweeteners, dairy, shortening, oil, butter, baking powder, nuts, fruits, eggs, jelly, and other filling ingredients.

xiii. "Pudding and gelatin based desserts" means any soft, colorful or colorless, sweet preparation based, which could include dairy, eggs, sugar, or other sweeteners, collagen, cornstarch, or any other flavorings.

xiv. "Baked and fried goods" means baked or fried dough, batter, mixes, and decoration products such as cakes, cookies, and pastries that are high in saturated fat and/or sugar.

§1008 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.

§1009. Reserved

§1011. Reserved

§1012. 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 February 15, May 15, August 15, and November 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 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.

§1013. 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.

§1014. Recordkeeping

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 for which the records relate.

§1015. Reserved§1016. Reserved§1017. Reserved§1018. Reserved§1019. Reserved§1020. 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. One hundred percent (100%) of the Healthy Diné Nation Act of 2014 revenue collected from retail establishments located in the Navajo Nation shall be deposited into the Community Wellness Development Projects Fund to be appropriated pursuant to a fund management plan approved by

the Budget and Finance Committee and administered by the Division of Community Development; and

B. The Division shall disburse the funds to the chapters as seed money for leverage to initiate, match, and/or improve community wellness projects.

1021. 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.

§1022. 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.

§1023. Reserved

§1024. 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.

Section 3. Development of a Fund Management Plan

The Division of Community Development is hereby directed to develop a Community Wellness Development Projects Fund Management Plan.

Section 4. Effective Date

The amendments enacted herein shall be effective pursuant to 2 N.N.C. §221(B), and after the Navajo Tax Commission has promulgated the regulations, but no later than October 1, 2014.

Section 5. Codification

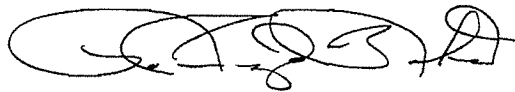
The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section 6. Savings Clause

Should any portion of the amendment enacted herein be determined invalid by the Navajo Nation Supreme Court, or the District Court of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions not determined invalid shall remain in law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 10 in favor and 4 opposed, this 14th day of November 2014.



LoRenzo Bates, Pro Tem Speaker
Navajo Nation Council

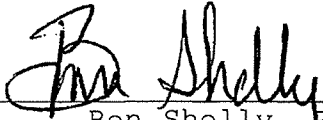
11-17-14

Date

Motion: Honorable Jonathan Nez
Second: Honorable Nelson BeGaye

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this _____ day of NOV 21 2014 2014.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2014 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation

NAVAJO NATION

599

12/23/2020

Navajo Nation Council Special Session

11:14:14 PM

Amd# to Amd#

Consent Agenda: Legislations

PASSED

MOT Nez, R

0278-20, 0287-20 and 0299-20

SEC Walker, T.

Yeas : 21

Nays : 0

Excused : 0

Not Voting : 2

Yea : 21

Begay, E

Daniels

Slater, C

Tso, D

Begay, K

Freeland, M

Smith

Tso, E

Begay, P

Henio, J

Stewart, W

Walker, T

Brown

James, V

Tso

Wauneka, E

Charles-Newton

Nez, R

Tso, C

Yellowhair

Crotty

Nay : 0

Excused : 0

Not Voting : 2

Yazzie

Halona, P

Presiding Speaker: Damon