

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

21<sup>ST</sup> NAVAJO NATION COUNCIL - Fourth Year 2010

AN ACT

RELATING TO HEALTH AND FINANCE, ENACTING THE TOBACCO PRODUCTS  
TAX AND LICENSING ACT AMENDMENTS ACT OF 2010; AMENDING TITLE  
24 OF THE NAVAJO NATION CODE

BE IT ENACTED:

**Section One. Findings.**

A. The Navajo Nation hereby finds that by Resolution Tax-10-218, attached hereto as Exhibit A, the Navajo Tax Commission recommended certain amendments to the Navajo Tobacco Products Tax and Licensing Act.

B. The Navajo Nation further finds that the amendments recommended by the Navajo Tax Commission are in the best interest of the Navajo Nation and the Navajo People.

**Section Two. Amendment of Title 24 of the Navajo Nation Code**

The Navajo Nation Council hereby amends Title 24 of the Navajo Nation Code, as follows:

NAVAJO NATION CODE ANNOTATED  
TITLE 24, TAXATION  
CHAPTER TOBACCO PRODUCTS TAX AND ~~LICENSING ACT~~

§ 800. Short TITLE

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

§ 801. Administration

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

## § 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, plus 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.~~ 3. "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.~~ 4. "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.~~ 5. "Retailer" means any person engaged in the sale or resale of tobacco products within the Navajo Nation.

~~7.~~ 6. "Sale" means a transfer of possession or ownership between buyer and seller for a consideration.

~~8.~~ 7. "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.~~ 8. "Period" means one calendar month.

## § 803. Tax imposed—rates

There is hereby levied and imposed by this Chapter for each period, ~~the following~~ a tax upon the first sale by any retailer or distributor of tobacco products. The tax rates shall be established in regulations. Until other rates are established, the following rates shall apply:

1. On each cigarette, ~~two (2¢)~~ five cents (5¢)
2. On smoking tobacco, snuff, chewing 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, eleven and three tenths cents (11.3¢) ~~four and five tenths (4.5¢) cents~~ per ounce or major fraction thereof;
3. On all Cavendish, plug or twist tobacco, two and eight-tenths cents (2.8¢) ~~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, twenty-two and three-tenths cents (22.3¢) ~~eight and nine tenth-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, eleven cents (11¢) ~~four and four-tenths (4.4¢) cents~~ on each cigar.

## § 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.

## § 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.

~~§ 806. Licensing requirements~~

~~1. All distributors and retailers licensed by Arizona, Utah, or New Mexico shall provide obtain from the Office of the Navajo Tax Commission with a copy of their state 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.~~

~~§ 807. Reserved 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.~~

#### § 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.

#### 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.

#### § 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.

**Section Three. Effective Date**

The provisions of this Act shall become effective in accord with 2 N.N.C. § 221(B).

**Section Four. Codification**

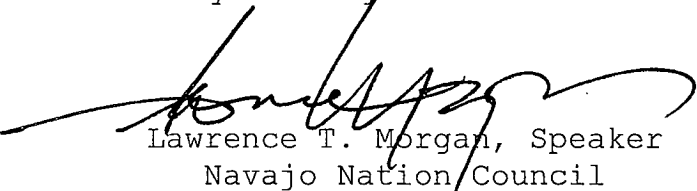
The provisions of this Act which amend sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel.

**Section Five. Savings Clause**

Should any provisions 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, or any other court of competent jurisdiction, those portions of this Act which are not determined invalid shall remain the 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 at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 49 in favor and 14 opposed, this 21<sup>st</sup> day of July 2010.

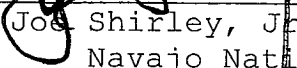
  
Lawrence T. Morgan, Speaker  
Navajo Nation Council

26 July 2010  
Date

Motion: Jerry Bodie  
Second: Peterson B. Yazzie

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 AUG 05 2010 2010.

  
\_\_\_\_\_  
Dr. Joe Shirley, Jr., President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2010 for the reason(s) expressed in the attached letter to the Speaker.

\_\_\_\_\_  
Dr. Joe Shirley, Jr., President  
Navajo Nation