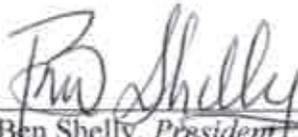




MEMORANDUM

TO: Honorable Johnny Naize, Speaker
The 22nd Navajo Nation Council

FROM: 
Ben Shelly, *President*
THE NAVAJO NATION

DATE: February 12, 2014

SUBJECT: **Legislation CJA-04-14; Relating to Law and Order, Resources and Development, Budget and Finance, Health, Education and Human Services, and Naabik'iyáti'; Amending Title 24 of the Navajo Nation Code by Enacting the Healthy Diné Nation Act of 2013.**

Legislation CJA-05-14; Relating to Law and Order, Resources and Development, Budget and Finance, Health, Education and Human Services, and Naabik'iyáti'; Amending 24 N.N.C. §§605 *et seq.* Approving the Elimination of the Sales Tax on Fresh Fruits, Fresh Vegetables, Water, Nuts, Seeds and Nut Butters.

Pursuant to 2 N.N.C. §1005(C)(10), the above titled Legislation CJA-04-14 and CJA-05-14 is being submitted to the Navajo Nation Council, through the Office of the Speaker, within the ten (10) days requirement.

The Navajo Nation President has veto authority that is subject to Navajo Nation Council override by two-thirds (2/3) vote before the end of the next regular session. 2 N.N.C. §1005(C)(11). **I hereby exercise my veto authority for Legislation CJA-04-14 and CJA-05-14.**

It is important to mention first, that, Vice President Jim and I fully support healthy living and is a priority in our administration. We believe it is important to draw awareness of responsibility to the Navajo Nation and to promote healthy living by reducing obesity and other diseases. We further believe that the Nation will become a national leader in community health-based prevention and intervention through awareness.

However, after review of Legislation CJA-04-14, the Navajo Nation government is not currently prepared to implement and collect taxes on junk food.

This legislation is an unfunded mandate, as there are no funds identified or appropriated to pay for the tax administration. Although the Office of the Navajo Tax Commission (ONTC) has a primary responsibility of collecting and regulating taxes, if imposed on the ONTC, this new responsibility would only increase the burden on the already underfunded tax office.

We also need to consider other applications, such as educating our retail sales taxpayers, communication with all retail outlets, change of tax forms and instructions, reprogramming cash registers and other consistent regulatory operations. Although the Nation currently has compliance officers, additional resources would be needed to ensure proper education, training and implantation that will be necessary to address questions which may arise with this legislation.

Furthermore, due diligent research in the areas of Navajo business and consumers is needed. It is important to consider the implication it would make on our local businesses, especially the small businesses. For that reason, Legislation CJA-05-14, being a concurrent legislation, will hinder our tax revenue if such taxes are eliminated. This proposed legislation (CJA-05-14) would decrease the tax revenue to Chapters, Judicial/Public Safety Facilities fund, Scholarships and Economic Development by a significant amount.

The Navajo Nation is not ready to implement the collection of taxes on junk food. However, it is important that we must explore other alternatives, such as education on health issues. It is for that reason, I directed our Tax Commission, Social Services and Health departments to come together and pull recommendations, so that the Nation may be better prepared if such legislation should arise again.

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, AND
NAABIK'ÍYÁTI'; AMENDING TITLE 24 OF THE NAVAJO NATION CODE BY
ENACTING THE HEALTHY DINÉ NATION ACT OF 2013

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 by diabetes; 89% of these women had pre-pregnancy Body Mass Index (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, Annual Diabetes Clinical Outcomes Audit (2012); 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. *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. Overweight and obesity are significant risk factors for many debilitating diseases and conditions that include heart disease, hypertension, colon and breast cancer,

arthritis, sleep apnea, respiratory problems, reproductive complications, and diabetes. Overweight is the most important risk factor for the development for Type 2 Diabetes Mellitus in youth. *Jacobson, MF (June 2012). Liquid Candy How Soft Drinks are Harming America's Health. Center for Science in the Public Health Interest. Washington, D.C. 2005.*

- D. Sugar sweetened beverages are the largest single source of added sweeteners in the United States diet. *Jacobson, MF (June 2012). Liquid Candy How Soft Drinks are Harming America's Health. Center for Science in the Public Health Interest. Washington, D.C. 2005.* Sweetened beverages contribute to obesity. Each 12 ounce soft drink per day consumed by children increases their odds of becoming obese by 60%. High soft drink consumption increases the risk of diabetes by 83% in women. www.foodpolitics.com.
- E. In 2009 the obesity rate within the eight service units of the Navajo Area Indian Health Service range from 23% to 60% and the overweight rate ranged from 17% to 39% for all age groups. Indian Health Service, Government Performance Results Act, (GPRA) Program Assessment Rating Tool (PART) Report (07/1/08-06/30/09) Unpublished GPRA Report). Navajo Area Indian Health Service, St. Michaels, Arizona.
- F. The revenue generated from a Junk Food Tax will be earmarked for chapters to plan for community originated wellness projects such as wellness centers, community parks, basketball courts, walking, running and bike trails, community gardens, family picnic grounds, and health education classes.
- G. It is the intent of the Navajo Nation Council, by approving the Healthy Diné Nation Tax to diminish the human and economic costs of obesity and diabetes on the Navajo Nation. The intent is to discourage excessive consumption of sweetened beverages and other junk food and to create 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.

H. There is public support for the proposed tax on sweetened beverages and junk food among communities across the Navajo Nation. Navajo Nation Chapter Resolutions and resolutions from other entities in support of a tax on junk food are attached hereto as Exhibit A.

I. The Navajo Nation finds it is in the best interest of the Navajo Nation to amend Title 24 of the Navajo Nation Code by hereby enacting the Healthy Diné Nation Act of 2013.

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

The Navajo Nation hereby amends the Navajo Nation Code, Title 24, enacting 24 N.N.C. §§1001 et seq. as follows:

NAVAJO NATION CODE ANNOTATED TITLE 24. TAXATION

§1001. Short Title

The tax imposed by this Chapter shall be called "The Healthy Diné Nation Act of 2013."

§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. The tax due for a period is determined by first calculating applicable gross receipts junk food items for a period, and then multiplying those gross receipts junk food items by the applicable tax rate. This tax shall expire at the end of the calendar year 2018 unless extended 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 a junk food sale.

§1005. Rate Of Tax

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 a rate is established, the rate shall be two percent (2%) of the applicable junk food sales from all retail sales (.02 x applicable junk food sales).

§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: community parks; playgrounds; basketball courts; walking/running/biking trails; swimming pools; picnic grounds; community gardens; farmers' markets; exercise equipment; skate parks; intergenerational, contemporary, and traditional wellness, fitness, and health classes; traditional and non-traditional healthy food preparation classes; and community food cooperatives with food processing and healthy food initiatives; and storage facilities for health and wellness equipment and supplies.

B. "Fresh fruits and fresh vegetables" means produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage.

C. "Junk Food" means sweetened beverages and prepackaged and non-prepackaged snacks low in essential nutrients and high in salt, fat, and sugar including snack chips, candy, cookies, and pastries, excluding nuts, nut butters, and seeds.

- i. "Sweetened beverage" means a beverage, whether carbonated or noncarbonated, sold for human consumption, that contains five grams or more of added sugar or other sweetener including artificial sweetener per twelve ounces. It shall include: soda, flavored water, sports drinks, energy drinks, colas and flavored drinks: diluted fruit or vegetable drinks containing seventy percent or less of natural fruit juice of natural vegetable juice; frozen, freeze-dried or other concentrates to which water is added to produce a beverage containing less than seventy percent natural fruit juice or natural vegetable juice; a powder or base product; and bottled coffee or tea as a liquid for sale.
- ii. "Sugar" includes sucrose, dextrose, fructose, corn syrup, high-fructose corn syrup or other processed caloric sweeteners, except those derived from fruit juice,
- iii. "Sweetener" includes artificial sweetener, which includes aspartame and saccharin
- iv. "Natural 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.

- v. "Natural 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.
- vi. "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, vegetable juice or any other product suitable to make a sweetened beverage.
- vii. "Corn syrup" means syrup made from cornstarch, consisting of dextrose, maltose, and dextrans.
- viii. "Candy" means snacks prepared of sugar, honey, salt, fat, other natural or artificial sweeteners in combination with chocolate, dried fruits, nuts, white flour, or other ingredients or flavorings in the form of bars, drops, or pieces.
- ix. "Snack Chips/Crisps" (sodium and fat) means crispy type snack foods that are often fried such as potato chips, tortilla chips, or cheese puffs that are high in sodium and fat.
- x. "Baked Goods" means baked or fried dough/batter products such as cakes, cookies, and pastries that are high in fat and or sugar.
- xi. "Nuts" means a fruit consisting of a hard or tough shell around an edible kernel.
- xii. "Nut Butters" means ground nuts blended to make a paste or spread.
- xiii. "Seeds" means the grains or ripened ovules of fruits, vegetables, or plants such as sunflower seeds, flax seeds, pumpkin seeds, and mixed nuts without sugared candies.

§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**§1010. 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.

§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 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.

§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 to 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 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. 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 and after the Navajo Tax Commission has promulgated the regulations but no later than January 1, 2014.

Section 5. Codification

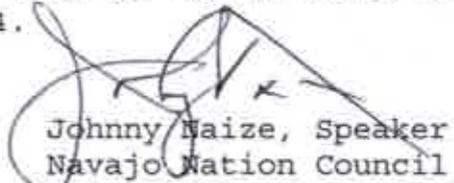
The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

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 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 in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that same was passed by vote of 12 in favor and 7 opposed, this 30th day of January 2014.


Johnny Naize, Speaker
Navajo Nation Council
Feb 04, 14
Date

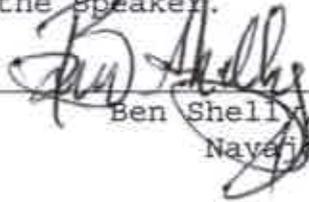
Motion: Honorable Jonathan Nez
Second: Honorable Edmund Yazzie

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 _____ 2013.

Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this 12th day of February 2013, for the reason(s) expressed in the attached letter to the Speaker.



Ben Shelly, President
Navajo Nation