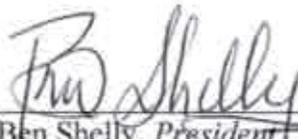




MEMORANDUM

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 COUNCIL22nd 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 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

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 current Navajo Nation sales tax rate is five (5) percent. The Navajo Tax Commission resolution, TAX-12-221, amending the Sales Tax Regulations reflecting the five (5) percent sales tax rate is attached hereto as Exhibit A. The proposed amendment to 24 N.N.C. §605 updates the change made by the Navajo Tax Commission resolution, TAX-120-221.
- G. It is the intent of the Navajo Nation Council, by approving the elimination of a sales tax on fresh fruits, fresh vegetables, water, nuts, seeds, and nut butters, to diminish the human and economic costs of obesity and

diabetes on the Navajo Nation. The intent is to encourage the purchase and consumption of fresh fruits, fresh vegetables and water to prevent obesity, Type 2 Diabetes Mellitus and other such health conditions.

H. The Navajo Nation finds it is in the best interest of the Navajo Nation to amend 24 N.N.C. §§605 *et seq.* by hereby approving the elimination of the sales tax on fresh fruit, fresh vegetables, water, nuts, seeds, and nut butters.

Section 2. Elimination of the Sales Tax on Fresh Fruits, Fresh Vegetables, Water, Nuts, seeds, and Nut Butters

The Navajo Nation hereby approves the elimination of the sales tax on fresh fruits, fresh vegetables, water, nuts, seeds, and nut butters.

Section 3. Amendments to Title 24 of the Navajo Nation Code.

The Navajo Nation hereby amends the Navajo Nation Code, Title 24, §§ 605 *et seq.*, as follows:

NAVAJO NATION CODE ANNOTATED

TITLE 24. TAXATION

§ 605. Rate of tax

A. The tax imposed by this Chapter is imposed at a rate of not less than two percent (2%), nor more than six percent (6%), which shall be specifically established by regulations promulgated by the Navajo Tax Commission. This tax shall not be imposed on the purchase of fresh fruits, fresh vegetables and filtered bottled water including nuts, nut butters, and seeds. Until another rate is established, the rate shall be ~~four~~—five percent (4 5%) of the applicable gross receipts from all retail sales (~~-.04~~ .05 x applicable gross receipts).

§ 607. Definitions

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

F. "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.

J. "Nut Butters" means ground nuts blended to make a paste or spread

K. "Nuts" means a fruit consisting of hard or tough shell around an edible kernel.

R. "Seeds" means the grains or ripened ovules of fruits, vegetables, or plants such as sunflower seeds, flax seeds, pumpkin seeds, mixed nuts without sugared candies.

W. "Water" means drinking water that has no added sugar or other artificial sweeteners. It includes artisan, fluoridated, mineral, purified, sparkling, spring, or sterile (distilled) water.

[Paragraphs to be re-lettered in alphabetical order to accommodate amendments.]

Section 3. Effective Date

The amendments enacted herein shall be effective pursuant to 2 N.N.C. §221.

Section 4. Codification

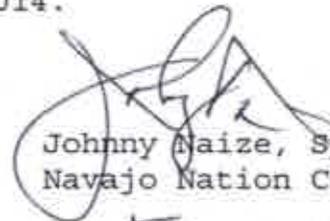
The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section 5. 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 the same was passed by a vote of 17 in favor and 1 opposed, this 30th day of January 2014.


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

Motion: Honorable David L. Tom
Second: Honorable Katherine Benally

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 _____ 2014.

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 2014, for the reason(s) expressed in the attached letter to the Speaker.



Ben Shelly, President
Navajo Nation