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President Shelly vetoes junk food tax, cites regulatory concerns

Navajo Nation President Ben Shelly vetoed CJA-04-14, amending Title 24 of the Navajo Nation Code by enacting the Healthy Dine' Nation Act of 2013. He cited the lack of regulatory provisions as the main reason. (Photo by Rick Abasta)

WINDOW ROCK—On Feb. 12, 2014, Navajo Nation President Ben Shelly penned his signature to veto the Healthy Diné Nation Act of 2013 and cited concerns with funding, regulatory considerations that were not included in the legislation passed by the 22nd Navajo Nation Council during the winter session.

The Shelly-Jim administration has focused on wellness and has healthy lives as one of the five main pillars of focus since taking office. However, the lack of sufficient regulatory provisions limited the legislation's chance for approval.

After meeting with his general counsel and the Office of the Navajo Tax Commission, President Shelly said the legislation would create an unfunded mandate, as there were no funds identified or appropriated to pay for the tax administration. In addition, the new responsibilities would increase the burden on the already underfunded tax office.

"There is no impact analysis. What's the impact on the local businesses, especially the small businesses? Is this tax legislation going to become law without the Nation clearly understanding its impact on Navajo businesses," he questioned.

A Jan. 23 memo from Martin Ashley, executive director of ONTC, responded to questions posed by the Speaker Johnny Naize on Jan. 15 regarding the amount of funds collected from junk food items and the impact of the tax elimination on fresh fruits and vegetables.

"Office of the Navajo Tax Commission has not surveyed the retailers to determine how much of the sales is derived from junk food to answer the questions posed," the memo stated.

ONTC provided a schedule with estimated percentages of junk food revenues based on FY 2013 gross retail sales on the Navajo Nation, which totaled $172.9 million. Included was a projection on the impact of eliminating taxes on fresh fruits and vegetables.

The matrix on was based on 50 to 80 percent of the FY 2013 gross retail sales. Multiplied against the prosed 2 percent tax, the revenue projections varied from $1.7 to $2.7 million.

Conversely, the sales tax elimination on fruits, vegetables, water, nuts and other healthy foods were projected against 10 to 20 percent the FY 2013 gross retail sales and multiplied by the proposed 5 percent tax break.

The amounts varied from $864,500 to $1,729,000 in decreased revenue to the Navajo Nation general fund. The cost estimates were based on 79 retail site locations on the Navajo Nation.

More research in these areas of concern need to addressed before the legislation is signed into law, President Shelly said, because Navajo businesses and consumers warrant due diligence on the matter.

Other considerations included the education of retail sales taxpayers on the legislation; communication with all retail outlets; changes in the tax forms and instructions; reprogramming cash registers to identify junk food taxable items; educating ONTC staff on compliance; and consistent regulatory operations.

"This proposed tax will be imposed on the Navajo people, not the food and beverage industry or its distributors," President Shelly said. "The junk food importers will continue business as usual.

"The bottom line is that Navajo people will be taxed to pay for community wellness projects to address health concerns that are the trust responsibility of the federal government," he added.

Other considerations included questions if restaurants, fast food chains and mutton stands would also be subject to junk food taxation.

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The Navajo Nation is not ready for implementation of collecting taxes on junk food. President Shelly said we must explore other alternatives like focusing on education of health issues. Taxation is not the answer.

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