

BUSINESS ACTIVITY TAX REGULATIONS

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1.401. TITLE

This chapter is called the Business Activity Tax Regulations.

1.402. RESERVED

1.403. RESERVED

1.404. TERMS AND USAGE

Subject to additional definitions, if any, contained in the subsequent paragraphs of this chapter, and unless the context otherwise requires, in this chapter:

- A. "Chapter" means these regulations, and the Business Activity Tax, 24 NNC §§401 et seq.
- B. "Tax" means the Business Activity Tax.

1.405. RESERVED

1.406. RATE OF TAX

The rate shall be 5%. A change in rate is effective the first day of the second period following its announcement.

1.407. RESERVED

1.410. RESERVED

1.411. MEASUREMENT OF GROSS RECEIPTS

- A. In general. Gross receipts are the money, and the fair market value of property or services, received by a branch on the sale of Navajo goods or services.
- B. Sale defined.
 - 1. In general. A sale consists of a transfer of goods or performance of services between a seller and a buyer for a consideration. Formal passage of title is not determinative of whether a sale has occurred or of the point at which it occurred. A sale will be determined not by form and formalities, but by the substance and circumstances of the transaction, including to whether the benefits and burdens of ownership are transferred from seller to buyer.
 - 2. Intra-branch rule. A sale also consists in the delivery of goods or performance of services by a branch for the use or benefit of the person of which the branch is a part.
- C. Sale outside the Navajo Nation. In the case of sales outside the Navajo Nation, gross receipts are determined by the value of the goods and services at the time and place they are transported outside the Navajo Nation.
- D. Sale to related person. In the case of a sale by a branch to a related person, the gross receipts are the fair market value of the goods or services sold.
- E. Fair market value. In general, fair market value is the price which would be arrived at in an arm's length transaction between a buyer and unrelated seller, both of whom are well-informed and acting without compulsion.
 - 1. When practicable, fair market value is to be established on the basis of prices paid in comparable transactions. Comparable means equivalent in all significant aspects.
 - 2. If there are no such transactions or the information is not available, estimates of fair market value may be made, subject to the provisions of Paragraph 1.431.
 - 3. For oil or gas transactions, in the absence of other facts, value is deemed to be the highest price paid or offered for the major portion of the products

severed from the field, as provided for in 30 C.F.R. Part 206.172, or the price established by regulatory authority.

1.412. NAVAJO SERVICES

Services performed by an individual in the capacity of an employee are not services for purposes of this statute. An individual who is a proprietor, partner, or other owner of a branch is not an employee of the branch.

1.413. RESERVED

1.414. RESERVED

1.415. RESERVED

1.416. OTHER COMPENSATION

For purposes of calculating the deductions allowed in Section 405(B)(1) of the Business Activity Tax, "compensation" includes employer contributions for social security and employment taxes, and for group insurance, investment, retirement, savings, and other plans which vest in or inure to the benefit of the employee.

1.420. RESERVED

1.421. RESERVED

1.422. BUSINESS ACTIVITY

Business activity includes, but is not limited to, the following:

- A. Activities. Trade and commerce, including manufacturing, power production, or any other productive activity such as extraction, processing, assembly, construction, transportation, transmission, and contractual services.
- B. Service activities. The performance of any service, including rendering as services the activities named in subparagraph (A).
- C. For profit or not. These activities are business activities regardless of whether they are, or are intended to be, profit making.

1.423. RESERVED

1.424. RESERVED

1.425. RESERVED

1.426. RESERVED

1.427. RESERVED

1.430. RESERVED

1.431. DETERMINATION OF METHOD

Source-gains are reported for each period on the basis of accounting and other methods.

- A. In general. The calculation of source-gains for the period, and the recognition of the includible gross receipts and the allowable deductions, will be made on the basis of the methods regularly applied in maintaining the books and records of the branch.

- B. Improper method. If there is no method, or a method is not regularly applied or does not clearly reflect source-gains, the Office of the Navajo Tax Commission will apply such method or methods as it determines will clearly reflect source-gains.
- C. Special methods. Where a special method is used to calculate source-gains or recognize gross receipts or deductions, it must clearly reflect source-gains, or such method will be used as is determined by the Office of the Navajo Tax Commission to clearly reflect source-gains.
- D. Change of method. A method must be used consistently from period to period and any change of method must be approved by the Office of the Navajo Tax Commission.

1.432. RESERVED

1.433. ALLOCATION OF RECEIPTS AND DEDUCTIONS

Where a branch has gross receipts in part not includible in source-gains, a reasonable method of allocation must be used, both for inclusion of gross receipts and for deductions claimed. Any such method is subject to the provisions of Paragraph 1.431.

1.434. RESERVED

1.435. LIMITATIONS ON DEDUCTIONS

Deductions otherwise allowed by Section 405 of the Business Activity Tax are allowable in the calculation of source-gains, subject to the following qualifications, conditions, and aggregate limit.

- A. In general. A deduction is allowable only if:
 - 1. The expense or payment is an ordinary and necessary business expense, or reasonable compensation for services, incurred for the activities on which this tax is imposed; and
 - 2. The expense is incurred or the payment made for a period during which those activities give rise to receipts includible in source-gains.
- B. Period of deduction. A deduction is allowable for the period during which it is paid or accrued in accordance with the method determined under Paragraph 1.431.
- C. Before effective date. No deduction is allowed for any amount paid or accrued before July 1, 1978.
- D. Compensation of owners. No deduction is allowed for salaries, wages, or other compensation paid to any proprietor, partner, or other compensation paid to any proprietor, partner, or other owner of a branch. In the case of related persons, reasonable compensation for services actually rendered may be allowed in whole or in part.
- E. Payroll not purchases. The payroll or compensation paid to the employees or owners of a branch are not "purchases" of services under Section 405 of the Business Activity Tax.
- F. Disallowance of purchases. No deduction is allowed for any purchase of goods or services from a seller which is not a branch unless the seller is exempt under Section 408 of the Business Activity Tax.
- G. Standard deduction. With respect to the deduction allowed in Section 405(C) of the Business Activity Tax:
 - 1. The amount is computed on the basis of the gross receipts includible in the source-gains for the period.
 - 2. See Paragraph 1.437 for the limit on a branch which is one of a group of related branches.

H. Aggregate limit. The allowable aggregate of all deductions claimed may not exceed the gross receipts includible in the source-gains for the gross receipts and cannot be used to reduce source-gains in any other period.

1.436. INSTALLMENT DEDUCTIONS

If a branch is under an obligation to make a payment to the government of the Navajo Nation which is for a definite period of time longer than three months, then the deduction under Section 405(B)(3) of the Business Activity Tax may be taken either:

- A. In period of payment. Entirely in the tax period in which payment is actually made; or
- B. Ratably over all periods. Provided that the payment has already been made, ratably over the tax periods within the period of time for which the payment was made.

1.437. BRANCH CONSOLIDATION

- A. If a person owns or controls more than one branch, or two or more branches are owned or controlled by related persons, then the branches will be allowed either:
 - 1. One \$125,000 amount, allocated among them as they see fit; or
 - 2. Each branch must deduct ten percent (10%) of its includible gross receipts for the period.
- B. As a means for claiming the aggregate minimum in subparagraph A, the branches may elect to file a single, combined return under rules prescribed in special instructions.

1.438. RESERVED

1.440. RESERVED

1.441. FILING OF RETURNS

The return required to be filed under this chapter is the Business Activity Tax Return, Form 401. Forms and instructions will be mailed to any person making a written request. A return may be filed on a clear copy of the official form.

1.442. RESERVED

1.443. RESERVED

1.444. RESERVED

1.445. OTHER RETURN REQUIREMENTS

Information or other returns may be required from any person the Office of the Navajo Tax Commission deems necessary for the proper and efficient administration of this tax.

- A. Separate returns. If a branch is an association, joint venture, or partnership, or a part thereof, and where it is necessary to clearly reflect the source-gains of the branch or to facilitate proper reporting, the Office of the Navajo Tax Commission may require that each associate, participant, or partner whether general or limited, file a separate return in accordance with this chapter. The limits in Paragraph 1.437 on the standard deductions will apply to the returns.
- B. Information return. An operator of any oil and gas property who is not the owner of the entire working interest in the lease must file an information return of the production for the period. If the operator, or any interest, receives proceeds from the sale of oil and gas for other than its own interest, the information return must

report the value of the production for the quarter, except for production taken by another in kind. The return must also report any deductible expense common to all the interests. The return must be filed by the end of the month following each quarter, and separate statements must be sent to each interest owner, payee of proceeds, or taker in kind. A branch which complies with this requirement is relieved of the obligation to report, in a return filed under Paragraph 1.441, the gross receipts from the sale of products on behalf of other interests.

1.446. **RESERVED**

1.447. **RESERVED**

1.448. **RESERVED**

1.449. **RESERVED**

1.460. **RESERVED**

1.461. **EFFECTIVE DATE**

This chapter is effective in accordance with the Tax Administration Regulations.

1.462. **RESERVED**

1.463. **RESERVED**