

BUSINESS ACTIVITY TAX

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401. **SHORT TITLE.**

The tax imposed by this chapter shall be called the "Business Activity Tax."

402. **TAX IMPOSED.**

A tax is hereby imposed on the source-gains of a branch at the rate established under Section 406. The tax due for a period is computed by multiplying the source-gains of the branch for the period by the tax rate.

403. **ADMINISTRATION.**

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

404. **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. "Branch" means any person engaged in trade, commerce, manufacture, power production, or any other productive activity, whether for profit or not, wholly or in part within the Navajo Nation.
- B. "Source-gains" of a branch are the gross receipts of that branch from the sale, either within or without the Navajo Nation, of Navajo goods, or services, as those terms are defined in paragraphs C. and D. of this section, minus the deductions allowable under Section 405.
- C. "Navajo goods" are all personal property produced, processed, or extracted within the Navajo Nation, including coal, oil, uranium, gas, and other natural resources and electrical power.
- D. "Services" are all services performed within the Navajo Nation, including the transport or transmission by whatever means of coal, oil, uranium, gas, other natural resources and electrical power.
- E. "Sale."
 - 1. General rule: A "sale" consists of a transfer of ownership between buyer and seller for a consideration.
 - 2. Intra-branch rule: A "sale" also consists of the delivery of Navajo goods, or the performance of services, by a branch, for the use or benefit of any person of which the branch is a part.
- F. "Gross receipts" of a branch means and are to be determined according to the following rules.
 - 1. General rule: Except as provided in subparagraphs 2. and 3. below, the "gross receipts" of a branch are the amount of money or the fair market value of property and services received by the branch on the sale of Navajo goods or services.
 - 2. Sales without the Navajo Nation: For sales without the Navajo Nation, "gross receipts" are determined by the value of the Navajo goods and services at the time and place said goods and services are transported outside the Navajo Nation.
 - 3. Sales among related persons: On the sale of Navajo goods and services by a branch to a related person, "gross receipts" are the fair market value of the Navajo goods or services sold.
 - 4. Estimate of fair market value: When practical, fair market value is to be determined on the basis of consideration paid in comparable transactions, but if such information is not available, the estimate of fair market value will be made according to regulations.
- G. "Period" means a calendar quarter.
- H. "New business" means a manufacturer or processor that occupies a new business facility or a grower that commences operation in the Navajo Nation on or after January 1, 1999.

- I. "New business facility" means a facility in the Navajo Nation that satisfies the following requirements:
1. the facility is used by the taxpayer in the operation of a revenue-producing business. The facility shall not be considered a "new business facility" if the taxpayer's only activity with respect to the facility is to lease it to another person;
 2. the facility is acquired by or leased to the taxpayer on or after July 1, 1998. The facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer, or the commencement of the term of the lease to the taxpayer occurs on or after that date, or if the facility is constructed, erected, or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;
 3. the facility is a newly acquired facility in which the taxpayer is not continuing the operation of the same or a substantially identical revenue-producing business that previously was in operation in the Navajo Nation; a facility is a "newly acquired facility" if the facility was acquired or leased by the taxpayer from another person even if the facility was used in a revenue-producing business in the Navajo Nation immediately prior to the transfer of the title to the facility to the taxpayer or immediately prior to the commencement of the term of the lease of the facility to the taxpayer by another person, provided that the revenue-producing business of the previous occupant was not the same or substantially identical to the taxpayer's revenue-producing business; and
 4. the facility is not a replacement business facility for a business facility that existed in the Navajo Nation.

405. **DEDUCTIONS.**

- A. In computing source-gains, a branch may deduct from its gross receipts the expenses set forth in subsection B. of this section and the standard deduction set forth in subsection C. of this section.
- (b) Deductions are allowed for the following expenses paid or accrued during the period in connection with the business activities giving rise to gross receipts includible in source-gains:
- (1) Salaries and/or other compensation paid to members of the Navajo Nation;
 - (2) Purchases of Navajo goods and services; and
 - (3) Any payment made to the government of the Navajo Nation, except for taxes paid pursuant to this chapter and any penalties or fines.
- (c) A standard deduction is allowed equal to ten percent (10%) of the includible gross receipts for the period, or \$125,000, whichever is greater; except as provided in subsections D. and E.
- (d) If a person owns or controls more than one branch or there exists more than one branch owned or controlled by related persons, then either all said branches shall be entitled to one \$125,000 standard deduction collectively, or each branch must take the ten percent (10%) standard deduction.
- (e) Except that, a branch which is engaged in construction activity as a general contractor shall not, with respect to said construction activity, be allowed the deductions provided in this section and, in lieu thereof, shall be subject to the reduced rate of tax provided in Section 406.

406. **RATE OF TAX.**

The tax rate shall be established in regulations. The rate shall not be less than four percent (4%) or more than eight percent (8%). Until another rate is established, the rate is five percent (5%). A change in the tax rate must be announced at least one full period before its scheduled effective date. Except that, for a branch, which is engaged in construction activity

as a general contractor, the tax on the gross receipts from said construction activity shall be computed at sixty percent (60%) of the general rate herein provided.

407. **RESERVED.**

408. **EXEMPTIONS AND EXCLUSIONS.**

- A. For any period beginning on or after January 1, 2001, a branch may exclude from its gross receipts any amounts on which the Navajo Sales Tax has been paid, provided that no such exclusion shall apply or be finally effective until the Sales tax has been paid to the Office of the Navajo Tax Commission. The proper filing of Navajo Sales Tax reports shall constitute a claim of the exclusions provided in this section.
- B. Nothing in this chapter shall be construed as imposing a tax on the government of the Navajo Nation or on any wholly owned subdivision or enterprise of the government of the Navajo Nation.
- C. Nothing in this chapter shall be construed as imposing on the Federal government a tax, which is prohibited by Federal law.
- D. Nothing in this chapter shall be construed as imposing a tax on the salary or wages of an individual engaged as an employee.
- E. A branch may exclude from its gross receipts any amount received under a subcontract and a certificate of exemption issued from the general contractor, provided that the general contractor is a person wholly exempt under Section 408(A) or is a branch which reports the gross receipts for the entire prime contract and is subject to the exception in Section 405(E) and the reduced tax rate provided in Section 406. The Commission may by form or regulation provide for proper issuance and filing of certificates of exemption.
- F. A branch, which is engaged in retail sales, may exclude from its gross receipts any amount received from the sale of non-Navajo goods at retail within the Navajo Nation.
- G. A branch may exclude from its gross receipts any amount derived directly from traditional farming or livestock activities within the Navajo Nation.
- H. A branch engaged in manufacturing activities may exclude from its gross receipts the cost of raw materials imported into the Navajo Nation to be used in the process of manufacturing Navajo goods.

409. **CREDITS.**

- A. 1. If on receipts from selling coal severed from Navajo Nation land a qualifying gross receipts, sales, business activity or similar tax has been levied by a state, the amount of state tax paid and not refunded may be credited against any Business Activity Tax due. The amount of the credit shall be equal to the lesser of twenty-five percent of the tax imposed by the state on the receipts or twenty-five percent of the Business Activity Tax.
- 2. A qualifying gross receipts, sales, business activity or similar tax levied by a state shall be limited to a tax that:
 - a. is substantially similar to the Business Activity Tax;
 - b. (1) for the period July 1, 2001 through June 30, 2002, provides a credit against the state tax equal to the lesser of thirty-seven and one-half percent (37.5%) of the tax imposed by the state on the receipts or thirty-seven and one-half percent (37.5%) of the Business Activity Tax imposed on the receipts, and (2) after June 30, 2002, provides a credit against the state tax equal to the lesser of seventy-five percent (75%) of the tax imposed by the state on the receipts or seventy-five percent (75%) of the Business Activity Tax imposed on the receipts;
 - c. is not used to calculate an intergovernmental coal severance tax credit with respect to the same receipts for the time period; and
 - d. is subject to a cooperative agreement between the Navajo Nation and the state.

- B. 1. With respect to the gross receipts of a taxpayer engaged in the transaction of business occurring after January 1, 1999, from a new business in the Navajo Nation, the person who is responsible for the payment of the Business Activity Tax may claim a credit against the Business Activity Tax for the amount of tax paid to a state as corporate income tax, in accordance with this section.
2. A taxpayer may claim a credit against the Business Activity Tax equal to fifty percent (50%) of the lesser of:
- a. the total Business Activity Tax liability of the taxpayer and associated with the activities for which the taxpayer is claiming the credit; or
 - b. the total state corporate income tax paid by the taxpayer and associated with the activities for which the taxpayer is claiming the credit.
3. For purposes of this section, the total state corporate income tax shall include estimated payments made by the taxpayer and associated with the activities for which the taxpayer is claiming the credit. After the taxpayer has filed the final return for a tax year, the taxpayer may file amended Business Activity Tax returns for the previous four quarters if necessary to accurately reflect the amount of credit to which the taxpayer is entitled.
4. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming the entitlement, and the taxpayer shall furnish to the Office of the Navajo Tax Commission, in the manner determined by the Office of the Navajo Tax Commission, proof of payment of the aggregate amount of tax on which the credit is based.

410. **DESIGNATION OF INDIVIDUAL.**

No designation need be made until a branch has gross receipts of one hundred twenty-five thousand dollars (\$125,000) or more in any period after the effective date of this chapter. This exception shall not apply if the branch is one which is described in Section 405(D) and one to which the limitations of that subsection will apply.

411. **FILING OF RETURN.**

- A. Except as provided in subsection (B) of this section, each branch must file a return of source-gains and the tax due for the 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. The Commission may by form or regulation require that other information and relevant documents which it deems necessary for the proper and efficient administration of the tax be included with the return, and that the return be signed by specified persons.
- B. No return need be filed by a branch for any period in which gross receipts are less than one hundred twenty-five thousand dollars (\$125,000). This exception does not apply if the branch had annualized gross receipts of five hundred thousand dollars (\$500,000) or more in any of the three years preceding the period. Nor does this exception apply if the branch is a general contractor subject to the exception in Section 405(E) and the reduced tax rate provided in Section 406, or if the branch is a subcontractor described in Section 408(D) and for any period to which that subsection applies.
- C. If the branch is one which is described in Section 405(D), and one to which the limitation of that subsection will apply, then for subsection (B) of this section to apply, all the related branches must in the aggregate meet both qualifications.
- D. If a branch is an association, joint venture, or partnership, or a part thereof, the Commission may require that each associate, participant, or partner whether general or limited, file a separate return in accordance with regulations, provided that the limits under Section 405(D) shall apply as though each associate, participant, or partner were owned or controlled by the branch and by each other.

- E. No return need be filed by any person who is exempt under Section 408(A), (B), and (C), provided that the Commission may require such person to file the information necessary to establish its exempt status.
- F. Exclusions from gross receipts shall be claimed in a return. In the case of the exclusion provided in Section 408(D), a proper certificate of exemption shall constitute such a claim.

412. **PAYMENT OF TAX.**

Payment of tax is due at the time the return is due. The Commission, however, may require payment of tax on a monthly basis in appropriate cases.

413. **RESERVED.**

414. **RECORDKEEPING.**

Records required to be kept must be preserved for six years beyond the time payment of tax is made, or if no payment is due, for six years beyond the end of the period to which the records relate.

415. **RESERVED.**

416. **RESERVED.**

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443. **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.

444. **EFFECTIVE DATES.**

This chapter shall take effect upon approval by the Navajo Nation Council and in accordance with 2 N.N.C. §1005.

445. **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.