

## ORDINANCE OF THE TO'NANEES'DIZI LOCAL GOVERNMENT TAX CODE

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## CHAPTER 1 UNIFORM TAX ADMINISTRATION ORDINANCE

### SECTION 1-01 SHORT TITLE:

This Chapter shall be known as Chapter One of Title 2 of the To'Nanees'Dizi Local Government.

### SECTION 1-02 PURPOSE:

The Purpose of this chapter is to provide rules applicable to all of the taxes imposed by the To'Nanees'Dizi Local Government.

### SECTION 1-03 ADMINISTRATION:

- A. The Council of Naat'áanii is empowered to administer, and delegate the administration of, all To'Nanees'Dizi Local Government taxes and, to that end, shall be empowered to adopt substantive and procedural rules and regulations, orders implementing its decisions and rulings, and instructions such as may be necessary to the proper and efficient administration of these ordinances.
- B. The Tax Manager shall have day-to-day responsibility for the administration of the To'Nanees'Dizi Local Government Tax Ordinances and shall have all powers consistent with its policies and procedures.

### SECTION 1-04 DEFINITIONS:

Subject to additional definitions (if any) contained in the subsequent sections of this chapter or in subsequent chapters.

- A. Control—the right or any kind of ability to direct the performance or activity of another, whether legally enforceable or not, and however such right may be exercisable or exercised.
- B. Fraud—occurs when any person:
  1. Willfully makes and subscribes any return, statement or other document that contains or is verified by a written declaration that it is true and correct as to every material matter and that the person does not believe to be true and correct as to every matter.
  2. Files any return electronically, knowing that the information in the return is not true and correct as to every material matter.
  3. With intent to evade or defeat the payment or collection of any tax, or knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, removes, conceals, or releases any property on which levy is authorized or that is liable for payment of tax or aids in accomplishing or causes the accomplishment of any of the foregoing.

- C. Ordinance—the To'Nanees'Dizi Local Government Ordinance, which includes this chapter and any tax Ordinances enacted by the Council of Naat'áanii.
- D. Person—any organization, whether a sole proprietorship, joint venture, trust, estate, unincorporated, association, company, corporation, or government or any part, division, or agency of any of the foregoing, and an individual or group of individuals.
- E. Regulations—the regulations adopted by the Council of Naat'áanii.
- F. Related persons—two or more persons owned or controlled, directly or indirectly, by the same person. As applied to natural person, "related persons" mean two or more natural persons who have a legal relationship arising out of marriage, addition, or blood through the third degree of kinship.
- G. Taxes—any tax, interest, penalties, and costs, imposed or assessed individually or collectively pursuant to the Ordinance.
- H. Taxpayer—the person liable for the taxes or the person responsible for collecting and remitting the taxes.

#### **SECTION 1-05 ASSESSMENT OF TAXES:**

- A. The taxes imposed by the Ordinance are assessed for a statutory period and are the liability of the taxpayers.
- B. The Tax Manager is authorized to assess taxes against a person and those assessments are presumed to be correct.
  1. When it appears that the return filed by a person understates the taxes due under the Ordinance, the Tax Manager is authorized to assess the person for any tax deficiency, interest, penalties, and costs. The assessment is binding on the person but may be appealed in accordance with rules and regulations.
  2. If no return is timely filed as required, the Tax Manager is authorized to make an estimate of the tax due and to assess the person for that tax, interest, penalties, and costs. This assessment is binding on the person unless shown to be clearly erroneous.
  3. If a person fails to provide information within its possession or control which is relevant to a determination of taxes due and which it is required to provide under the Ordinance, the Tax Manager is authorized to make an estimate of the tax due and to assess the taxpayer for the tax, interest, penalties, and costs. This assessment is binding on the taxpayer unless it is shown that the estimate, on the basis of the best information then available to the Tax Manager, was clearly erroneous or unless the Tax Manager for other good cause shown relieves the taxpayer from the operation of this section.

- C. Any taxes assessed shall become the liability of the taxpayer on the date due. If the taxpayer is a corporation or a trust or a part thereof, then the corporation or trust shall be liable for the taxes. If the taxpayer is an association, joint venture, or partnership, or a part thereof, then all the associates, participants, or partners both general and limited, shall be jointly and severally liable for the taxes. Companies shall be treated as corporations or partnership consistent with their treatment by the Internal Revenue Service.
- D. The owners of the interests in a unit and lease shall be jointly and severally liable for the taxes assessed with respect to said unit and lease.
- E. Consistent with Section 1-29 of this chapter, the Tax Manager shall have the authority to re-determine incorrect or erroneous assessments, to issue amended assessments, if necessary.

#### **SECTION 1-06 RESERVED:**

#### **SECTION 1-07 NONDISCRIMINATION:**

No provision of this Ordinance shall be construed as imposing a tax which discriminates on the basis of whether a taxpayer is owned or controlled by members of the Navajo Nation.

#### **SECTION 1-08 DESIGNATION OF INDIVIDUAL:**

On an annual basis, each taxpayer must designate and provide the mailing address of a natural person for the purposes of notice, by filing a TC-FORM 100. The forms must be submitted each year to the Tax Manager by January 15, even if no changes have occurred since the prior filing. In addition, an updated form must be filed within 30 days of a change in circumstances. The Council of Naat'áanii may by regulation impose requirements as to the individuals who shall be designated under this section, and may require information or documentation it deems necessary for the proper and efficient administration of these taxes to be provided with the designation. For purposes of this section only, the term "taxpayers" shall not include persons on whom the Hotel Occupancy Tax is imposed, but shall include persons responsible for collecting and remitting the Hotel Occupancy Tax.

#### **SECTION 1-09 EXTENSION OF TIME:**

A taxpayer may request an extension of time for filing using TC-FORM 200 and TC-FORM 245. The request must be made to the Tax Manager by filling the required extension request form on or before the due date, and an estimated payment of the tax due must be made at the time of the request. An automatic extension of 60 days will be granted by the Tax Manager.

#### **SECTION 1-10 RECORDKEEPING:**

Every taxpayer shall keep full and true records of all taxable activities, in accordance with regulations.

## **SECTION 1-11 INTEREST IMPOSED:**

Internal Revenue Services rates will be utilized. Interest shall be imposed on any unpaid amount of tax from the date the payment was due, without regard to any extension of time or stay of payment, to the date payment is received.

## **SECTION 1-12 PENALTIES FOR FAILURE TO FILE:**

- A. If any taxpayer fails to timely file any tax return, a penalty shall be assessed for each month or fraction thereof that the return is not filed, in the amount of 5% of the tax due for the period; provided, however, that the minimum amount for the total penalty imposed under this section shall be \$50.
- B. The total penalty assessed in subsection (a) shall not exceed 25% of the tax due, except where the \$50 minimum applies.
- C. If a person fails to timely file a TC-FORM 100, a one-time \$50 penalty shall be assessed for each document that is not timely filed.
- D. For purposes of this section, a form filed on or before an extended due date for filing is timely filed.
- E. For good cause shown, the Tax Manager may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

## **SECTION 1-13 PENALTIES FOR FAILURE TO PAY:**

- A. A taxpayer failing to timely pay an amount of tax by the time due shall be assessed a penalty of 5% of the amount of the underpayment.
- B. For each full month the payment is overdue, an additional penalty shall be assessed of 0.5% of the underpayment.
- C. The total penalty imposed under this section shall not exceed 10% of the tax due.
- D. For purposes of this section, a payment received on or before an extended date for payment is timely paid.
- E. For good cause shown, the Tax Manager may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

## **SECTION 1-14 PENALTIES FOR ATTEMPT TO EVADE OR DEFEAT TAX:**

- A. Any taxpayer understating the tax imposed by the Ordinance through negligence of the Ordinance and regulations, but without the intent to defraud, may be assessed a penalty of \$250, plus 25% of the underpayment of tax.

- B. Any taxpayer understating the tax imposed by the Ordinance through reckless disregard of the Ordinance and regulations, but without the intent to defraud, shall be assessed a penalty of \$250, plus 25% of the underpayment of tax.
- C. If any part an understatement of tax is shown to be due to fraud, the taxpayer shall be assessed a penalty of \$500, plus 50% of the underpayment of tax.
- D. Any person who willfully assists a taxpayer in the fraudulent understatement of tax due under the Ordinance shall be subject to a penalty of \$500, plus 25% of the underpayment of tax.
- E. Any liability arising under this section shall be assessed and collected as taxes imposed by the Ordinance.
- F. For good cause shown, the Tax Manager may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

#### **SECTION 1-15 CHARGES FOR ADMINISTRATIVE COSTS:**

- A. A taxpayer failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including, but not limited to, attorney fees and other costs of collection.
- B. For good cause shown, the Tax Manager may relieve the taxpayer from all or part of the charges imposed under this section.

#### **SECTION 1-16 FAILURE TO COMPLY WITH ORDINANCE:**

- A. Any taxpayer who fails to comply with a requirement: to designate an individual, to file a return, to provide information or documents, to allow access to equipment within its possession or control, to furnish a surety bond or other security, to comply with a duly issued subpoena, or to comply with a lawful order of the Tax Manager, may have all or some of its right to engage in productive activity within the Tuba City (Navajo Nation), Arizona suspended, until compliance is made or for such shorter time as the Tax Manager may provide.
- B. Upon receipt of a notice of non-compliance issued by the Tax Manager, a taxpayer has 30 days in which to come into compliance. If the taxpayer fails to do so, the Tax Manager shall issue a notice of intent to suspend. The taxpayer shall have 30 days in which to come into compliance or to appeal only the notice of intent to suspend pursuant to Section 1-30. This right of appeal is the sole remedy. Failure on the taxpayer's part to act within the 30 days shall result in the Tax Manager issuing a final order of suspension. In addition, if an appeal is decided adverse to a taxpayer, the Tax Manager shall issue a final order of suspension.
- C. The Navajo Nation Division of Public Safety shall enforce the final order of suspension, which shall remain in effect until the taxpayer comes into compliance.

## **SECTION 1-17 INTERFERENCE WITH ADMINISTRATION:**

Information concerning criminal interference with administration of the Ordinance shall be provided to the Office of the Prosecutor or appropriate authorities for appropriate action.

## **SECTION 1-18 COLLECTION POWERS:**

- A. In accordance with the provisions of the Ordinance, the Tax Manager has the power to collect any taxes assessed, including the power to attach and seize the assets of a taxpayer or any property subject to lien. In addition, the Tax Manager shall utilize all available resources provided by the Navajo Nation for collection of debts owed it.
- B. The Tax Manager may request the Attorney General of the Navajo Nation to bring suit or enforcement proceeding in any court of competent jurisdiction. Provided, that the bringing of suit or enforcement proceeding shall not constitute a waiver of sovereign immunity and further provided that the Tax Manager shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

## **SECTION 1-19 SECURITY FOR PAYMENT:**

Whenever necessary to secure the payment of any taxes due or reasonably expected to become due, the Tax Manager is authorized to require the taxpayer to furnish an acceptable surety bond in an appropriate amount. The Council of Naat'áanii shall prescribe by regulation the terms and conditions for requiring such security. For purposes of Section 1-30, the requirement of security for payment shall be considered an adverse action.

## **SECTION 1-20 LIEN FOR TAXES:**

- A. If a taxpayer fails to pay any taxes after demand or assessment by the Tax Manager, or fails to provide security as set out in Section 1-19, the amount shall be a lien in favor of the To'Nanees'Dizi Local Government upon all property or rights to property of those liable under Section 1-05.
- B. The lien shall arise at the time the demand or assessment is made, shall attach to all property then owned and thereafter acquired, and shall continue until the amount of the lien is satisfied or released, and shall be effective against related persons without notice.
- C. Provided, that with respect to a required return, a lien shall arise for any unpaid taxes at the time filing is due without further demand or assessment.
- D. If a lien is required as a condition for granting an extension or stay of payment, such lien shall arise according to the terms of the extension or stay.
- E. A lien shall be effective as against other parties upon notice being recorded in the offices of the Tax Manager and the Business Regulatory Department in a form available for inspection by the public.

F. The Council of Naat'áanii may by regulation exempt certain property from the operation of the lien created by this section.

#### **SECTION 1-21 PRIORITY OF LIEN:**

A lien arising pursuant to Section 1-20 shall have priority over all other liens imposed by any government other than the To'Nanees'Dizi Local Government, regardless of the date of perfection.

#### **SECTION 1-22 RELEASE OF LIEN:**

- A. The lien shall be released upon payment of the entire liability of the taxpayer on account of whose liability the lien arose.
- B. The payment of any part of the liability shall operate to reduce the amount of the lien by the amount paid.
- C. Where a lien has been recorded and the Tax Manager thereafter receives all or part of the taxes giving rise to the lien, the Tax Manager will cause a notation of the computer or partial release of the lien to be made in the record.
- D. The Tax Manager may in its direction release liens on certain property without payment of all outstanding liabilities, for good cause and where the interests of the To'Nanees'Dizi Local Government are adequately by other security.

#### **SECTION 1-23 FORECLOSURE OF LIEN:**

- A. The Tax Manager may foreclose upon any or all items of property or rights to property subject to a lien for taxes by seizure and sale, to be conducted as set forth in this Section 1-23 and accompanying regulations.
- B. Seizure:
  1. After seizure of property or rights to property, the Tax Manager shall notify the owner thereof of the amount and kind of property seized and of the total amount demanded in payment of tax.
  2. Any person shall have the right to pay the amount due, together with the expense of the proceeding, or furnish acceptable security for the payment thereof, to the Tax Manager at any time prior to the sale thereof, and upon payment or furnishing of security, the Tax Manager shall restore the property to him, and all further proceeding in connection with the seizure of the property shall cease from the time of the payment.
  3. A taxpayer may appeal a seizure, and appeals shall be taken pursuant to Section 1-30 under the following conditions:
    - a. The seized property shall not be removed from the jurisdiction of the To'Nanees'Dizi Local Government.

- b. The taxpayer must provide an affidavit identifying all property or rights to property owned or controlled by the taxpayer located within the jurisdiction of the To'Nanees'Dizi Local Government.
- 4. The effect of a seizure upon any person for obligations due or payable to a taxpayer or persons liable under Section 1-05 shall be continuous from the date seizure is first made until the liability out of which the seizure arose is satisfied.
- 5. Any person in possession of or obligations with respect to property or rights to property which has been seized who, upon demand by the Tax Manager, surrenders such property or rights to property (or discharges said obligation) to the Tax Manager, shall be discharged from any obligation or liability to the taxpayer or persons liable under Section 1-05 whose property or rights to property were seized.

C. Sale of Seized Property:

- 1. The Tax Manager shall publish a notice of sale, setting forth the time and place of the sale.
- 2. Proceedings for the sale of property shall be effective to transfer to the purchaser all right, title, and interest therein of the taxpayer or person whose property or rights to property were seized. Provided, that where required by federal law the sale of property shall not be final without the approval of the Secretary of the Interior or his designee pursuant to U.S.C. 25 (415)(a)(e).

D. The Tax Manager may delegate and empower persons to carry out the procedures of this Section 1-23, including officers of the Navajo Division of Public Safety, who shall render assistance in this regard on request by the Tax Manager.

#### **SECTION 1-24 APPLICATION OF PROCEEDS:**

- A. Money seized by the Tax Manager, or realized from property or rights to property seized, shall be applied first to the expenses of the seizure and proceedings for the conversion of property, and then to the liability for costs, penalties, interest, and tax in that order.
- B. The balance, if any, shall be remitted to the person or persons who have claimed and proved legal entitlement thereto, provided that the Tax Manager may set time limits or other reasonable conditions on the marking and proving of such claims.

#### **SECTION 1-25 INTERFERENCE WITH FORECLOSURE:**

- A. No person shall remove from the jurisdiction of the To'Nanees'Dizi Local Government any property on which there is a lien for taxes pursuant to Section 1-20.

- B. No person in possession of or obligated with respect to property or rights to property which have been seized, shall fail to surrender such property or rights or to discharge such obligation upon demand by the Tax Manager therefore, except as to any part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process.
- C. Any person violating the provisions of this Section 1-25 shall be personally liable for the value of the property removed or not surrendered, or for the amount of the obligation not discharged, not exceeding the amount for which the seizure was made. Any liability arising under this Section 1-25 shall be assessed and collected as taxes imposed by the Ordinance.

#### **SECTION 1-26 TRANSFER OF BUSINESS:**

- A. If a person buys substantially all of the assets of a taxpayer within Tuba City (Navajo Nation), Arizona, that person shall withhold from the purchase price and pay to the Tax Manager the amount of taxes due on account of activities of the taxpayer prior to the purchase.
- B. Prior to transfer, a buyer may make a written request and, within 45 days after the owner's records are made available for audit, the Tax Manager shall send a notice to the buyer for the taxes due. Thereafter, the buyer shall not be personally liable under this section for any taxes in excess of the amount stated in the notice, or for any such taxes if no notice is given within the time required.
- C. Any buyer failing to make such a request or failing to withhold taxes from the purchase price shall be personally liable up to the value of all the property acquired. Any liability arising under this section shall be assessed and collected as taxes imposed by the Ordinance.

#### **SECTION 1-27 PROHIBITION OF SUITS:**

No suits for the purpose of restraining the assessment or collection of the taxes imposed under the Ordinance shall be maintained in any court by any person, whether or not such person is the person against whom such taxes were assessed. All actions concerning the application of the Ordinance shall be brought pursuant to Section 1-30.

#### **SECTION 1-28 STATUTE OF LIMITATIONS:**

- A. Taxes imposed and required to be collected by the Ordinance shall be assessed within four (4) years after the return is filed, except as provided in subsection (B) of this section.
- B. Exceptions to the statute of limitations on assessment:
  1. Exceptions to the statute of limitations on assessment:
    1. In the case of fraudulent conduct, no period of limitations shall apply.
    2. In the case of failure to file a return, declaration of interest, or other required document, no period of limitations shall apply.

3. The running of the period of limitations on assessment is suspended during any period the Tax Manager is prohibited by any court from making an assessment.
4. The running of the period of limitations on assessment may be suspended for any period agreed upon between the taxpayer and the Tax Manager.

C. Any action in a court or by seizure for collection of taxes imposed by the Ordinance must be commenced within four (4) years of the date of assessment, except as provided in subsection (4) above.

D. Exceptions to the statute of limitation on collection:

1. The running of the period of limitations on collection is suspended during any period the Tax Manager is prohibited by any court from commencing collection proceedings and during any period of appeal under Section 1-30.
2. The running of the period of limitations on collections may be suspended for any period agreed upon between the taxpayer and the Tax Manager.

### **SECTION 1-29 PROCEDURE FOR REFUNDS:**

Any taxpayer believing it has made an overpayment of taxes may file a written claim for refund with the Tax Manager. These refund claims must be filed within one year after the alleged overpayment was made. The procedure for refund claims shall be established in regulations.

### **SECTION 1-30 PROCEDURE FOR APPEAL:**

Pursuant to the To'Nanees'Dizi Local Government Tax Code Rules and Procedures for Appeals Regulations shall be used.

### **SECTION 1-31 ABATEMENT AUTHORITY:**

- A. In response to a written request for abatement, or when an assessment is found to be incorrect, the Tax Manager may abate any part of the assessment determined to have been incorrectly, erroneously, or illegally made.
- B. Upon a compromise of liability and according to the terms of the closing agreement formalizing the compromise, the Tax Manager shall abate the appropriate amount of the assessment.

### **SECTION 1-32 CLOSING AGREEMENTS:**

- A. If in good faith the Tax Manager at any time is in doubt of the taxpayer's liability, it may enter into a written closing agreement with the taxpayer that adequately protects the interests of the To'Nanees'Dizi Local Government, provided that such agreement shall be subject to approval by the Council of Naat'aánii and Tax Manager.

- B. If entered into after an appeal has been filed pursuant to Section 1-30, a closing agreement shall be part of a stipulated order or judgment disposing of the case.
- C. As a condition for entering into a closing agreement, the Tax Manager may require the provision of security for payment of any taxes due according to the terms of the agreement.
- D. A closing agreement is conclusive as to the liability or non-liability for payment of taxes relating to the periods referred to in the agreement only, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

#### **SECTION 1-33 CONFIDENTIALITY RULES:**

- A. Nothing in this section is intended to prevent the publication or disclosure of the names and addresses of registered taxpayers or general information which is otherwise in the public record or generally available to the public upon the making of reasonable inquiry.
- B. It shall be unlawful for any employee or former employee of the To'Nanees'Dizi Local Government to reveal to any person, other than another employee or legal counsel for the To'Nanees'Dizi Local Government and/or Tax Manager, any information contained in the return of any taxpayer or any other information about any taxpayer acquired as a result of his or her employment by the To'Nanees'Dizi Local Government, except:
  1. Where the taxpayer has given detailed consent in writing to the release of specific information.
  2. To an authorized representative of the taxpayer.
  3. To an employee of the To'Nanees'Dizi Local Government for use in connection with the governmental function of said employee, provided that it shall be unlawful for the employee to reveal said information except as permitted in this Section.
  4. To an authorized representative of a federal agency, pursuant to the terms of a reciprocal agreement for the exchange of such information.
  5. To the taxpayer, in any administrative or judicial proceeding in which that taxpayer has put its own liability for compliance with the To'Nanees'Dizi Local Government and Navajo tax laws in issue, as to all information directly reflecting, referring, or relating to that taxpayer that is not otherwise privileged.
  6. In compliance with the order of a hearing officer of competent jurisdiction or any court of competent jurisdiction in which the information sought is material to the inquiry.
  7. In recording tax liens on the property of a taxpayer or collecting taxes by levy upon the property or rights to property of a taxpayer.
  8. In statistical releases not identifying the information provided as applicable to any single taxpayer.

9. To the extent of revealing whether a taxpayer has or has not made a designation (and, if so, the name and address of that designee), or whether a person is or is not a designee (and, if so, by whom he has been designated).
10. To the extent of revealing to the purchaser or intended purchaser of a taxpayer or the property thereof the amount and basis of any unpaid taxes for which the seller is liable.

C. For purposes of this section, "employee of the To'Nanees'Dizi Local Government" shall include any person for whose services the To'Nanees'Dizi Local Government has contracted, provided that such person shall agree in the contract for services to abide by the provisions of this section.

D. Any To'Nanees'Dizi Local Government employee or former employee who violates any of the provisions of this section shall be subject to a civil fine not to exceed \$500. The District Courts of the Navajo Nation shall have jurisdiction to hear cases arising under this section, which may only be brought by the taxpayer harmed by the violation of this section.

E. The Tax Manager may in its discretion further restrict the disclosure of information, and such restriction shall be considered an adverse action for purposes of Section 1-30.

#### **SECTION 1-34 NOTICE:**

The Tax Manager may give notice to a taxpayer by mailing the notice to the individual last designated by the taxpayer, at the address shown on the designation. Where a taxpayer has not designated an individual, notice may be given by mailing the notice to the last known address of the taxpayer, or by mailing the notice to a person who is lessee, permittee, or assignee of the affected property, or to a person holding a permit or license for the conduct of the taxable activity. The use of other methods of providing notice, including publication, may be made so long as the method comports with due process.

#### **SECTION 1-35 INVESTIGATIVE AUTHORITY:**

- A. For the purpose of enforcing the provisions of the Ordinance, the Tax Manager is authorized to inspect property, to examine and require the production of any pertinent records, books, information, evidence, or financial data, and to require the presence of any person and require testimony under oath concerning the subject matter of an inquiry, and to make a permanent record of the proceeding.
- B. As a means for accomplishing the foregoing, the Tax Manager is hereby vested with the power to issue subpoenas and summonses, pursuant to regulations.
- C. The Courts of the Navajo Nation shall have the power to enforce administrative subpoenas and summonses issued by the Tax Manager.

### **SECTION 1-36 OATHS AND AFFIRMATIONS:**

Any agent or employee designated by the To'Nanees'Dizi Local Government's Council of Naat'aanii for that purpose is authorized to administer such oaths or affirmations and to certify to such documents as may be necessary under the Ordinance or the regulations.

### **SECTION 1-37 SEVERABILITY:**

If any provision of this Ordinance, 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 Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

### **SECTION 1-38 EFFECTIVE DATE:**

This Chapter originally took effect on January 1, 2010. The 2011 amendments to the Uniform Tax Administration Ordinance shall be effective June 1, 2011.

## **CHAPTER 2 TO'NANEES'DIZI LOCAL GOVERNMENT SALES TAX ORDINANCE**

### **SECTION 2-01 SHORT TITLE:**

The tax imposed by this Chapter shall be called the "Sales Tax."

### **SECTION 2-02 PURPOSE:**

The Council of Naat'aanii hereby enacts this tax for the privilege of engaging in business activity within Tuba City (Navajo Nation), Arizona, and for purposes of defraying necessary governmental expenses at the local level.

### **SECTION 2-03 TAX IMPOSED:**

A tax is hereby imposed on the gross receipts of a person. The tax due for a period is determined by first calculating applicable gross receipts for a period, and then multiplying those gross receipts by the applicable tax rate.

### **SECTION 2-04 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 sale.

### **SECTION 2-05 RATE OF TAX:**

The tax imposed by this Chapter is imposed at a rate of not less than 4% nor more than 10%, which shall be specifically established by regulations adopted by the Council of Naat'aanii. Until another rate is established, the rate shall be 6% (.06 x applicable gross receipts).

## **SECTION 2-06 ADMINISTRATION:**

All provisions of the Uniform Tax Administration Ordinance shall apply to this Chapter 2.

## **SECTION 2-07 DEFINITIONS:**

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter 2, and unless the context otherwise requires, in this Chapter 2:

- A. Consideration—any money or other pecuniary benefits, goods, personal or real property, services, or any combination thereof, which accrues as a right, profit, advantage, or benefit to a person, or which reflects a payment, detriment, loss, or responsibility of a person.
- B. Construction Activity—any building, altering, repairing, installing, or demolishing in the ordinary course of business, whether a project is completed or not, any:
  - 1. road, highway, bridge, parking area, fence, livestock guard, gate, or related structure;
  - 2. building, stadium, or other structure;
  - 3. airport, railway, or similar transportation facility;
  - 4. parks, trail, athletic field, golf course, or similar facility;
  - 5. dam, reservoir, canal, ditch, culvert, or similar facility;
  - 6. sewerage or water treatment facility, power plant, pumping station, natural gas compressing station, gas processing plant and gathering lines, coal gasification plant, refinery, distillery, blending, or similar facility;
  - 7. sewerage, water, coal, coal slurry, gas, or other pipeline;
  - 8. transmission line;
  - 9. radio, television, microwave, telephone, or other similar tower;
  - 10. water, oil, gasoline, fuel or other storage tank;
  - 11. shaft, tunnel, or other mining appurtenance;
  - 12. microwave station, or similar facility;
  - 13. leveling, clearing, or other preparation of land;
  - 14. excavating of earth
  - 15. drilling of wells of any type, including seismograph shot holes or core drilling; or

16. Any similar work or activity.
- C. Employee—a person in the service of another person under an contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.
- D. Enterprise—any non-corporate business entity created by action of the Navajo Nation Council.
- E. Fair Market Value—the amount of consideration at which personal or real property or services would change hands via an arms-length transaction between a willing buyer and a willing seller, or a willing lessee, neither of whom is under any compulsion to act.
- F. General Contract—any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or unwritten, which is entered into by a general contractor.
- G. General Contractor—a person primarily responsible for the performance of a construction project pursuant to a contract. A "General Contractor" may enter into subcontracts, but remains primarily responsible for the management, planning, supervision, coordination, and performance of the contract.
- H. Gross Receipts—the total amount of money, credit, or any other pecuniary benefit or advantage, plus the fair market value of an other consideration, which is actually received during any period by any person from the sale or leasing of real or personal property of any kind, the sale of services of any other consideration, which is actually received during any period by any person from the sale or leasing of real or personal property of any kind, whether for profit or not, conducted wholly or partially within Tuba City (Navajo Nation), Arizona. "Gross Receipts" does not include the salary or wages of an individual engaged as an employee. "Gross Receipts" includes those amounts received for any and all personal or real property which is an integral, but not necessarily a significant or primary, component of the service(s) rendered, regardless of the date, time, manner, and location of sale, delivery, or use of such personal or real property.
- I. Manufacturing Activity—combining or processing components or materials into a finished product, whether manually or mechanically, for the purpose of resale in the ordinary course of business, but does not include construction activity.
- J. Tuba City (Navajo Nation), Arizona—all areas within the territorial jurisdiction of the To'Nanees'Dizi Local Government.
- K. Performance—the partial or complete fulfillment or accomplishment of a promise, contract, or other obligation according to the terms of such promise or contract.
- L. Period—a calendar quarter.

- M. Personal Property—any tangible property which may be seen, touched, weighed or other use, goods purchased for incorporation into other personal or real property, and goods purchased for use in the performance of any service, whether or not such goods are consumable, movable, separable, affixed to, or incorporated into, other personal or real property, and whether or not such goods retain their original character upon final sale. “Personal Property” also means any intangible property, which cannot be physically perceived by the human senses, such as patents, trademarks, copyrights, franchises, licenses, knowledge, information, ideas, advice, and other intangible items of value or legal rights of any kind.
- N. Sale—any transaction, including a lease or rental, for consideration of any kind that results in the transfer of ownership and/or possession, delivery, use, or enjoyment of personal or real property, or the performance of any service. A “Sale” includes circumstances where the title to personal or real property is retained as security for payment, and includes circumstances where no actual physical transfer of personal or real property, and includes circumstances where no actual physical transfer of personal or real property or services occurs.
- O. Sale for Resale—a sales transaction for purposes of any further sale, processing, manufacturing, or other commercial or industrial purposes, as distinguished from a retail sale.
- P. Services—manual, mechanical, or intellectual labor performed, and includes other business activity that does not have physical characteristics.
- Q. Subcontract—any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or unwritten, between a general contractor and a subcontractor.
- R. Subcontractor—a person who takes from the general contractor a specific part of the work undertaken by the general contractor.

## **SECTION 2-08 NAVAJO NATION GOVERNMENT/TO'NANEES'DIZI LOCAL GOVERNMENT:**

Sales by corporations owned by the Navajo Nation government/To'Nanees'Dizi Local Government, any political subdivision thereof, or any enterprises shall be fully subject to the tax imposed by this Chapter 2.

## **SECTION 2-09 EXEMPTIONS AND EXCLUSIONS:**

- A. Nothing in this Chapter shall be construed as imposing a tax on the gross receipts of a subcontractor provided that:
  - 1. The general contractor with whom the subcontractor has contracted has reported and paid all taxes due under this Chapter 2, or has assumed liability for payment of all taxes due under this Chapter 2 by signing and issuing a certificate of exemption to the subcontractor; and,

2. The subcontractor must obtain from the general contractor a certificate of exemption issued to the general contractor by the Tax Manager. This certificate must be signed by the general contractor, and must indicate that the general contractor has reported and paid all taxes due under this Chapter 2, or has assumed liability for payment of all taxes due under the Chapter 2.
- B. In calculating applicable gross receipts, a person may exclude those gross receipts on which any of the following Navajo Nation taxes have been paid:
  1. Navajo Nation Oil and Gas Severance Tax.
  2. Navajo Tobacco Products Tax , until such time the To'Nanees'Dizi Local Government has established and approves Ordinances for Tobacco Products Tax.
  3. Navajo Nation Fuel Excise Tax, until such time the To'Nanees'Dizi Local Government has established and approves Ordinances for Fuel Excise Tax.
- C. The tax imposed by this Chapter does not apply to gross receipts generated directly by the following:
  1. Sales for resale.
  2. Sales of agricultural products or livestock, when the seller is the person who grew the agricultural products and/or raised the livestock.
  3. Sales, other than sales from an unrelated trade or business as defined in Section 511 – 513 of the Internal Revenue Code, by any person operating exclusively for non-profit or charitable purposes, and recognized as such pursuant to Section 501(C)(3) or 501(C)(19) of the United States Internal Revenue Code at the time of sale.
  4. Sales by facilities engaged in childcare, foster care or adoption placement, or battered families and homeless shelters.
  5. Sales of stocks, private or government-issued bonds, mutual funds, or other investments, including income received as dividends or interest.
  6. Sales by itinerant salespersons.
  7. Occasional sales by persons who are not regularly engaged in the business of selling personal or real property or services.
  8. Sales by educational institutions, including primary and secondary schools, colleges, vocational, and job training programs.
  9. Sales by hospitals and health-care organizations or facilities and blood banks, or other facilities or retirement homes, kidney dialysis facilities and blood banks, or other facilities or persons which provide medical care and services.

10. Sales from coin-operated vending machine of any type.
11. Sales related to traditional Native American ceremonies or services.
12. Sales of prescription medicines, prosthetic devices, or other medical devices, including medical oxygen monitoring strips or devices, prescription eyeglasses and contact lenses, or any durable medical equipment primarily and customarily used for medical purposes and not useful in the absence of illness, injury, or other medical condition.
13. Sales related to funerals and human burials.
14. Sales paid for by coupons issued by the United States Department of Agriculture under the Food Stamp Act 1977 (P.L. 95-113).
15. Sales paid for by vouchers issued under Section 17 of the Child Nutrition Act (P.L. 95-627 and P.L. 99-669).
16. Sales of newspapers or other daily publications.
17. Sales of mobile homes, motor homes, motor vehicles, tractors, and hauling trailers for private use, possession, or enjoyment, provided that such items are not resold or used in any business activity or service.

D. Nothing in this chapter shall be construed as imposing directly upon the United States a tax which is prohibited by federal law.

#### **SECTION 2-10 FILING OF RETURN:**

- A. Each person must file a return indicating all sales from applicable gross receipts and the tax due under this Chapter 2 for each period by the thirtieth day of the first month after the end of each quarter (January 30, April 30, July 30, and October 30).
- B. No return need be filed by any person who is exempt under Section 2-09, provided that the Tax Manager may require such person to file the information necessary to establish its exempt status.
- C. In the case of the exemption provided for in Section 2-09(A), the filing by a person of a proper certificate of exemption with the Tax Manager shall constitute a claim for exemption.

#### **SECTION 2-11 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.

## **SECTION 2-12 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 (4) years beyond the end of the period to which the records relate.

## **SECTION 2-13 ALLOCATION OF REVENUE:**

After allocation to permanent or special revenue funds as required by Navajo Nation law, the net revenue from this Chapter shall be disbursed as follows:

- A. 1/12 of the amount collected shall be deposited into the To'Nanees'Dizi Local Government Savings and Investments.
- B. 1/12 of the amount collected shall be deposited into the To'Nanees'Dizi Local Government Suspense Fund, to be used for tax refunds.
- C. 1/3 of the amount collected shall be used for To'Nanees'Dizi Local Government administration and/or operational costs.
- D. 1/6 of the amount collected shall be used for To'Nanees'Dizi Local Government projects.
- E. 1/12 of the amount collected shall be used for scholarship and student enrichment programs.
- F. 1/12 of the amount collected shall be deposited into the To'Nanees'Dizi Local Government Waste Management Fund.
- G. 1/6 of the amount collected shall be used for matching funds for economic development projects.

## **SECTION 2-14 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 this Chapter which can be given effect without the invalid provisions or application, and to this end, the provisions of this Chapter are severable.

## **SECTION 2-15 EFFECTIVE DATE:**

This Chapter originally took effect on January 1, 2010. The 2011 amendments to the Sales Tax Ordinance shall be effective June 1, 2011.

## **CHAPTER 3 TO'NANEES'DIZI LOCAL GOVERNMENT HOTEL OCCUPANCY TAX ORDINANCE**

### **SECTION 3-01 TITLE:**

The tax imposed by this chapter shall be called the "Hotel Occupancy Tax".

### **SECTION 3-02 PURPOSE:**

The purpose of this Hotel Occupancy Tax is to defray necessary governmental expenses at the local level.

### **SECTION 3-03 TAX IMPOSED:**

- A. A tax is imposed on a person who, under a lease, concession, permits, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing \$2 or more each day.
- B. The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except for those services related to cleaning and readying the room for use or possession.
- C. All charges for items or services, other than person services or charges for use of telephone, which are furnished in connection with the actual occupancy of the room, are subject to the hotel tax. The taxable charges include charges for the furnishing of additional bed, baby cribs or cots.
- D. If a hotel includes meals, admission to tourist attraction, or any other unrelated benefits in the charge for lodging, hotel tax must be paid on the entire amount. Only if these charges are separately stated on the bill to the customer may they be deducted from the amount subject to tax.

### **SECTION 3-04 RATE OF TAX:**

The tax imposed by this Chapter is imposed at a rate of not less than 8% nor more than 14%, which shall be specifically established by regulations adopted by the Council of Naat'áanii. Until another rate is established, the rate shall be 8% (.08 percent of the price paid for a room in a hotel).

### **SECTION 3-05 ADMINISTRATION:**

The provisions of the Uniform Tax Administration Ordinance shall apply to this chapter 3.

### **SECTION 3-06 DEFINITIONS:**

- A. Hotel—a building in which members of the public obtains sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist court, lodging house, inn, or rooming house, but does not include a hospital, sanitarium, or nursing home.
- B. Period—a calendar quarter any other reporting period established by regulation.
- C. Room—any room in a hotel for the use of which the hotel receives consideration.

### **SECTION 3-07 COLLECTION OF TAX:**

- A. A hotel shall collect the tax that is imposed by this chapter and that is calculated on the amount paid for a room in the hotel.
- B. The hotel is liable for taxes whether or not the hotel collects the taxes from the person renting the room.

### **SECTION 3-08 EXCEPTION: PERMANENT RESIDENT:**

This chapter does not impose a tax on a person who has the right to use or possess a room in a hotel for at least 30 consecutive days.

### **SECTION 3-09 RETURN AND PAYMENT:**

On the last day of each period, a hotel required to collect the tax imposed by this chapter shall pay the Tax Manager the tax collected during the period, on the thirtieth day of the first month after the end of each quarter (January 30, April 30, July 30, and October 30) and at the same time shall file with the Tax Manager a return stating (January 30, April 30, July 30, and October 30):

- A. The total amount of the payments made for rooms at the hotel during the preceding period.
- B. The amount of the tax collected by the hotel during the preceding period.
- C. Other information that the Tax Manager requires to be in the return.

### **SECTION 3-10 RECORDKEEPING:**

Records required to be kept must be preserved for six (6) years beyond the time payment of tax is made, or if no payment is due, for six (6) years beyond the end of the period to which the records relate.

### **SECTION 3-11 ALLOCATION:**

After allocation to permanent or special revenue funds as required by Navajo Nation law, the net revenue from this Chapter shall be disbursed as follows:

- A. 50% of the amount collected shall be deposited into the To'Nanees'Dizi Local Government Tourism Operation Fund.
- B. 12.5% of the amount collected shall be deposited into the To'Nanees'Dizi Local Government Tourism Marketing, Advertising and Promotion Fund.
- C. 12.5% of the amount collected shall be deposited into the To'Nanees'Dizi Local Government Suspense Fund, to be used for tax refunds.
- D. 25% of the amount collected shall be deposited into the To'Nanees'Dizi Local Government Land Development Fund.

**SECTION 3-12 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.

**SECTION 3-13 EFFECTIVE DATE:**

The 2011 amendments to the Hotel Occupancy Tax Ordinance shall be effective June 1, 2011.