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Native American Tribe--With Tax Exempt Casinos--Has Nation's First Junk Food Tax

Junk food taxes are [sin taxes](#) to control behavior, but they also raise revenue. With obesity, diabetes and other health problems on the rise, junk food taxes are hardly a novel concept. But they have been hard fought and harder to pass. Not anymore. Ironically, a tax exempt Native American Tribe, the Navajo Nation, is the first jurisdiction in America to impose one.

The Navajo reservation encompasses a territory the size of West Virginia, straddling Arizona, New Mexico, and Utah. The Navajos passed a 2% sales tax on pastries, chips, soda, desserts, fried foods, sweetened beverages, and other products with “minimal-to-no-nutritional value.” The tax has been a long time coming, but its arrival is still historic. Although sin taxes are imposed on producers or sellers, they are almost inevitably passed on to buyers. They differ from sales taxes mostly by being more targeted. Suspect services can be targeted too.



There are similar [fat](#) and [sugar](#) tax initiatives outside the U.S. Mexico has one. But there has not been one in the U.S. until now. [The sales tax will generate an estimated \\$1 million a year](#) in 110 tribal chapters for greenhouses, food processing and storage facilities, traditional foods cooking classes, community gardens, farmers' markets, etc.

According to the Indian Health Service, about 25,000 of the Navajo Nation's [300,000 members](#) have type-2 diabetes. Another 75,000 are pre-diabetic. There is rampant hypertension and cardiovascular disease. The legislation was vetoed three times by Navajo Nation President Ben Shelly, [because of questions about how the tax would be regulated](#). There have been worries over the potential impact on small business owners and consumers. But eventually, the tax gained favor.

Although this is America's first junk-food tax, Berkeley, California has gone part way there with the nation's first soda tax. Curiously, Native American tribes and their wholly owned tribal corporations are not subject to federal income taxes on their earnings. 236 Native American tribes operate 422 facilities across 28 states. Yet tribes are exempt from federal income taxes even when conducting commercial activities. They can form corporations to conduct business, and their income remains exempt.

However, exempt tribal income can be taxed when distributed to individual members of the tribe. One of the more complicated rules permits Native American tribes to make per capita distributions of revenue from gaming activities to tribe members. These per capita distributions are taxed.

Some "general welfare" payments to individuals under social benefit programs are *not* taxed. In general, to be tax-free, payments must be made under a governmental program; be for the promotion of general welfare (*i.e.*, based generally on individual, family or other needs); and not be compensation for services.

Absent an express authorization from Congress, states do not have the power to tax Native Americans living on a reservation whose income is derived from reservation sources. However, a state *may* tax Native Americans on income (including wages from tribal employment) if they reside in the state but outside the reservation. As with many other tax rules, these rules are becoming more controversial.

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