

Navajo Nation Junk Food Tax
A Presentation
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Background –

The Navajo Nation has collected on average \$110 million dollars in taxes from 8 taxes over the last three (3) years. This year the Navajo Nation Council and Navajo Nation President passed and signed into law the 9th tax in the Navajo Nation. The Healthy Diné Nation Act of 2014 was signed into law on November 21, 2014. This law “is to take responsibility of our [the Navajo Nation’s] health crisis, to raise awareness of unhealthy foods, to empower everyone to lead productive and healthy lives.” Diabetes rates are increasing, obesity rates are rising, and incomes levels are low in the Navajo Nation. The Healthy Diné Nation Act of 2014 was designed to curb this health crisis in the Navajo Nation. Its purpose is focused on increasing the health of the citizens of the Navajo Nation.

The Healthy Diné Nation Act focused on curbing consumer behavior by adopting a tax on junk food or minimal-to-no nutritional value food. But the Act and tax on “junk food” was also designed to raise revenue to address the capacity deficits and other deficits in infrastructure to support a “healthy” nation. The revenue raised is placed into a Community Wellness Development Projects Fund. The funds are to used to “initiate, match, and/or improve community wellness projects.” This revenue is meant to achieve the long-term implicit outcomes of the Healthy Diné Nation Act, which is a physically healthy Navajo people. The outcome of lower rates of obesity and diabetes would serve as the implicit indicators or a Healthy Diné Nation. Third, the tax was supposed to be

fair to taxpayers. While any sales tax is regressive in nature, the junk food tax has particular issues in the Navajo Nation, especially given that nearly 60% of all households in the Navajo Nation live on less than \$35,000 a year, and 20% of all households in the Navajo Nation live on less than \$10,000 a year. The notion of a regressive sales tax implies that nearly 60% of all households in the Navajo Nation bear a disproportionate burden of the tax.

On April 1, 2015 the “junk food” tax became effective. The Navajo Nation ended the first quarter of junk food tax. The tax quarter from April 1st to June 30th yielded a little over \$300,000 in taxes collected on junk food. This report will provide an early assessment of the Navajo Nation junk food tax. It will focus on four (4) areas of early lessons on the junk food tax: 1) capacity issues of both retailers and the Navajo Nation Tax Commission, 2) uniform interpretation and application of the law, and 3) fairness of the incidence of the tax and 4) early indications of achieving outcomes of health.

I – Capacity

Transaction costs of the junk food tax are on the high end. However, give this is the first quarter, there is an expectation that start-up costs would be high. This section will briefly describe issues encountered by retailers in adjusting to the junk food tax.

Retailers in a very short, snow-ball sample open-ended interview, noted issues in calibrating their machines to capture the complexities of the Navajo Nation tax. In other words, the point of sale machines were not equipped for the details of the tax and, according to one vendor, “the subjective nature of the tax.” This “subjective nature” refers to the tax law not being precise in what is and is not considered junk food. Consequently, the machines were not calibrated and often calibrated differently. This burden in adjusting the machines to account for the tax created issues in its even application. For example, one fast food establishment, because of the limitation of the point in sale machines, applied the tax to all items sold at the establishment.

II – Interpretation of Tax Law

“Minimal-to-no nutritional value” and the elements in the Healthy Diné Nation Act have been interpreted as both too vague with not enough detail to too detailed and too subjective. This has led to numerous complaints, namely informal, to the Navajo Nation Tax Commission, Council Delegates, and retail establishment owners and managers about what the tax is and isn’t. The tax has been arbitrarily applied. This has led to an uneven application. Because the tax is self-report, the burden of interpreting and applying the tax is upon the retailer. This has led to some items being tax in one area and in others it not being taxed. For example, a restaurant in Chinle, Arizona will apply the junk food tax to food that is ordered with a Navajo fry bread, like a sandwich made with fry bread. However, in another restaurant in Mexican Water, Arizona the exact same sandwich will not apply the tax.

Each of the retailers noted that they are not sure what is and is not “junk food” but feel a level of paranoia in order to comply with the law and the Navajo Nation Tax Commission. One retailer noted, “while I agree we need healthier foods, and I’m willing to do that, the tax itself was not well-thought out and leaves a lot for me to interpret what is and is not junk food.” Another retailer noted that the law needed more detail. This retailer asked, “What about cake mix? Or frosting?” He continued, “I think Crisco oil should be considered junk food.” And lastly, he noted that marshmallows were exempt by the Navajo Nation Tax Commission from being considered junk food even though “it’s made with sugar and corn syrup.”

In the monitoring and collection side, argument for efficiently collecting the tax center on simplifying the law, focusing on generally accepted definitions of food items to avoid confusion and uneven application. There is some movement to amend the Healthy Diné Nation Act to simplify it and also to provide a set of criteria to define and identity what is and is not junk food. Currently a set of criterion does not exist to assist retailers with defining the tax.

III – Fairness to Tax Payers

Taxpayers and not retailers bear the incidence of this tax. With the Navajo Nation sales tax rate at 5%, an additional tax of 2% on junk food creates an effective tax rate of 7% on “junk food.” The purpose the tax was to target specifically obesity and diabetes rates in the Navajo Nation. Over 60% of the Navajo Nation hovers around the poverty threshold or below. 26% receive Social Security Supplementary income, close to 25% receive SNAP benefits, and many others work in the gray economy of the Navajo Nation and attempt support their household on less than \$600 a month, many of whom do not receive SNAP benefits for one reason or another. It is safe to state that nearly 60% of the Navajo Nation households, with an average household size of 3.5, are considered low-income.

This low-income group also experiences the higher rates of obesity and diabetes relative to the other income groups in the Navajo Nation, or the other 40% of the Navajo Nation. Thus, removing any sales tax on healthy foods, theoretically ought to induce changes in their consumer behavior. The economic notions substitution and income effects is an implicit justification and counter to the tax. According to economic theory, the substitution effect suggests that Navajo consumers would substitute junk food with food items lower in price, in this case, removing the tax on healthy foods was to be an incentive to healthy eating. The removal of taxes on healthy foods addresses the concerns with the income effect, that is less income on food because of the tax, thus purchasing food items of lower price (i.e. healthy foods in the Navajo Nation).

In the Navajo Nation given that 25% are on SNAP benefits, this frustrates the intent of the tax, at least on that 25% of the Navajo Nation receiving SNAP benefits. Thus grocers and retailers indicated, through inventory and sales records, that there is “no change in the types of food quantities purchased.” What this suggests is that those receiving SNAP benefits are immune from the tax and their behavior is not affected. Further the other 35% not on SNAP benefits are not immune for the tax and therefore bear the incidence of the tax. Working the retailers and culling through early data, it was determined that overall, there is no change, again, in the quantities of food items sold prior to the tax.

This suggests that those hovering just above the threshold for SNAP, which is close to 30%, bear the burden of this tax.

Therefore the \$300,000 revenue from the tax comes disproportionately from low-income Navajo households. However, given that consumer behavior has not shifted, at least at this early stage, suggests that the tax requires further study.

IV – Outcomes of Health

Given the ultimate goal of the tax is curb consumer behavior and induce healthy eating and lifestyles, DPI talked with a few retailers and reviewed preliminary data on one key indicator, the amount of “junk food” being sold. In this review, there was no change in the pattern of junk food items sold before and after the implementation of the tax. Despite healthy food not being taxed, there was no noticeable increase the amount of healthy foods sold after the implementation of the junk food tax. However, it must be stressed that these are early data and the effects of taxes take time.

Conclusion

This brief review of the state of the Junk Food Tax regime suggests that it is too early to assess the impact of the tax. What is clear, however, is greater detail or clarity and cogency of the Tax law is needed to mitigate complications that arise with implementation by both the Navajo Nation and the retailers. Second, retailers respond to markets and agree that healthier foods are needed, a campaign on healthy eating is a requisite companion to the tax on junk food. Third, economic research is not in full agreement about the nature of junk foods. However, a recent study was released on the Hungarian junk food tax implemented in 2013. This study showed that the tax “is estimated to decrease the consumed quantities of processed food” and that “dietary habits improved due to the tax mainly among the poorer households.” However, for this occur in the Navajo Nation and elsewhere, a serious study of SNAP benefits is necessary, especially given they are immune from such taxes.

Diné Policy Institute uniformly, based on economic and other empirical evidence, recommends the tax continue, as these experimental taxes have empirically demonstrated they can work.

Thank you.