

What is the Streamlined Sales Tax & How Does it Affect Tribal Governments?



**THANK YOU FOR LOGGING IN AND JOINING US,
PLEASE STANDBY –**

CALL-IN NUMBER: 1 (480) 297-0020

PASSCODE: 127-151-841

ENTER PERSONAL PIN RECEIVED VIA EMAIL

What is the Streamlined Sales Tax & How Does it Affect Tribal Governments?



**THE NATIONAL CONGRESS OF AMERICAN
INDIANS**

JOHN DOSSETT, GENERAL COUNSEL

DERRICK BEETSO, STAFF ATTORNEY

Roadmap for Today's Discussion



- What is the Streamlined Sales and Use Tax Agreement?
- A Brief Look at Indian Tribal Governments' Taxing Authority
- Current Remote Sales Tax Legislation
- How Do Tribal Governments Seek Inclusion in Any Upcoming Remote Sales Legislation?

Streamlined Sales and Use Tax Agreement



- States have a Tax Problem
- Supreme Court in 1992 (Quill v. North Dakota) – states cannot collect sales tax from out of state retailers because there are over 7,000 local and state taxes
- States needed streamlined uniformed sales tax legislation
- The Streamlined Sales and Use Tax Agreement
 - **Adopted November 12, 2002 & Amended through May 24, 2012**

Streamlined Sales and Use Tax Agreement



- States estimate that they will lose \$400 billion in revenue on remote sales over the next ten years
- The Streamlined Sales and Use Tax Agreement creates a foundation which simplifies the collection of sales taxes across state lines
- Each Member State Must:
 - **Provide State Level Administration of Sales and Use Taxes Subject to the Agreement**
 - **Be Equipped with a Certified Automated System**
 - **Ensure that Local Tax Bases are Identical to State Tax Base**

Streamlined Sales and Use Tax Agreement Uniform Sourcing Rules



The member states agree to require sellers to source the sale of a product in accordance with the following provisions.

- a) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- b) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser occurs -- the location indicated by instructions for delivery.

Streamlined Sales and Use Tax Agreement

Uniform Sourcing Rules



Remote Sales

Face to Face Sales

Seller → Buyer

Seller/Buyer

Location of Delivery
Controls

Business Location
Controls

Tribal Governments' Taxing Authority



Tribal Governments have authority to collect sales and use taxes on transactions within reservations.

Tribal motor fuel and tobacco taxes are common.

More tribes are implementing retail sales taxes and retail development is increasing significantly on many reservations.

Tribal members make purchases from remote sellers.

Tribal Governments' Taxing Authority

Supreme Court Rules



Tribal taxing authority is an inherent government function (Kerr-McGee, Colville)

Tribe may collect tax when product is received by any purchaser on tribal land. (Colville, Moe)

For products without “reservation generated value,” state may collect the tax when the product is received by a non-tribal member on tribal land. Dual Taxation. (Moe, Colville)

State may not collect tax when product is received on tribal land by tribal member or the Tribe. (Central Machinery, Moe, Warren Trading Post)

Sales on Tribal Lands



Remote Sales (on the Reservation)

Seller → Buyer

Location controls *If*
buyer is a Tribal
Citizen/Entity

Face to Face Sales

Seller/Buyer

Business Location
Controls *If* buyer is a
Tribal Citizen (treats
“non-member Indians”
as non-Indians)

Streamlined Sales and Use Tax Agreement v. Tribal Sales Transaction Rules

SSUTA

- Remote Sales –
Location of Delivery
- Face to Face Sales –
Location of Business

Tribal Rules

- Remote Sales –
Location of Delivery if
buyer is Tribal
Citizen/Entity
- Face to Face Sales –
Location of Business if
buyer is a Tribal
Citizen

Current Remote Sales Tax Legislation



S. 1832, Marketplace Fairness Act

-Senators Enzi (R-WY)

-Co-Sponsors: 20

S. 1452 (Durbin/D-IL), Main Street Fairness Act

S. 971 (Wyden/D-OR), Digital Goods and Services Tax Fairness Act of 2011

H.R. 3179 (Womack/R-AR3), Marketplace Equity Act of 2011 –
includes Indian Country within definition of a State

H.R. 2701 (Conyers/D-MI14), Main Street Fairness Act

H.R. 1860 (Smith/R-TX21), Digital Goods and Services Tax Fairness Act of 2011

Including Tribes in Remote Sales Legislation



Recently engaged in work group meetings for S. 1832

Possible consideration in early November

Tribes need to be included, much like language in S. 34 (Enzi/R-WY) from the 110th Congress

- Included tribes as member states;
- limited number of tribal reps on the Member Board;
- Protected future and existing tax agreements between states and tribes; and
- Did not attempt to override tribal tax jurisdiction on the reservation

Question & Answer



For further information on including Tribal Governments in Remote Sales Legislation, please contact:

- **John Dossett** at (202) 466-7767 or jdossett@ncai.org; or
- **Derrick Beetso** at (202) 466-7767 or dbeetso@ncai.org.

For general Information on NCAI's Tax Policy Work, please visit our Intertribal Tax Initiative Website at:

<http://www.ncai.org/initiatives/partnerships-initiatives/ncai-tax-initiative/ncai>