

ARSSTC Policy Committee Agenda  
April 19, 2022 \* 2:00pm – 3:00pm

1. Voluntary collection without remittance
2. Interpretation 2022.01 – Drop shipping w/ follow-up resale discussion
3. Tax cap uniformity discussion
4. Big box remote sellers with physical presence in a jurisdiction
5. Open Discussion



**To: ARSSTC Policy Committee**

**From: Clinton Singletary, Statewide Municipal Sales Tax Director**

**Date: April 19, 2022**

**Re: Policy re: Pre-Commission Remote Seller delinquent filings**

**Background**

The Commission is periodically contacted by businesses inquiring whether the Commission has a Voluntary Disclosure Agreement (VDA) program in place. Since the Commission does not, AMSTP staff question the business in more detail to determine the best approach for the business to take.

AMSTP staff generally advise these businesses to contact each jurisdiction in question to resolve the issue at hand, especially for filing periods prior to the existence of the Commission. But that approach may not be the best to ensure compliance and remittance from the business.

At the 3.15.22 Policy Committee meeting, the PC discussed how the Commission should approach these VDA program inquiries. There are a number of scenarios that could fall under a possible VDA program, but the PC felt that a specific scenario should be addressed outside of any Commission VDA program.

Here are the details to the scenario in question:

1. Business collected sales tax for the Communities in question for filing periods prior to the Commission's existence.
2. Business in question had / has no physical presence in the Communities in question, for filing periods prior to the Commission's existence.
3. Business is requesting to file the back sales tax returns for each community with the Commission and remit the collected sales tax to the Commission directly.

**Proposed Administrative Policy**

When contacted by the business or the business' representative, AMSTP staff will determine the business' qualifications to fall under the policy, namely:

- The business collected sales tax for multiple Communities for filing periods prior to the Commission's existence,
- The business had no physical presence in any of the Communities for which it collected sales tax.



If these qualifications are met, AMSTP staff will contact each jurisdiction for authorization for the Commission to collect the remittance from the business.

AMSTP staff recommends the business be allowed to file an annual return for each year's worth of remittances. No waiver would be applied as the filings would be delinquent causing the business to not have a history of good compliance. Late fees, penalties & interest would be assessed on the delinquent filings based on the Uniform Remote Seller Sales Tax Code rates.

The goal of this policy is to streamline the remittance process for a business that may have to file delinquent sales taxes with numerous jurisdictions. Streamlining this process would help ensure that each jurisdiction receives the remittance it should from the business.

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**To: ARSSTC Policy Committee**

**From: Clinton Singletary, Statewide Municipal Sales Tax Director**

**Date: April 19, 2022**

**Re: Application of resale exemption on drop-shipping transactions**

### **Background**

At the March 15, 2022 Policy Committee (PC) meeting, concern was raised by Committee members around the usage of resale certificates on certain drop-shipping scenarios. The specific scenario was one where the initial remote seller does not meet the economic nexus threshold on its sales into Alaska and would not be required to collect sales tax from the end consumer.

The PC was concerned about allowing this initial remote seller to claim resale exemption from its supplier, the drop-shipper. The assumption is that this drop-shipper does meet the economic nexus threshold into Alaska and is attempting to collect sales tax from its customer, the initial remote seller. The specific point of concern was that the business to business or “B2B” transaction should not be exempted since the reseller will not be required to collect sales tax.

### **Discussion**

The resale exemption is arguably the most common sales tax exemption in use. The resale exemption is frequently explained as the way to avoid double-taxation on a transaction. While that is technically accurate, the phrasing “avoid double-taxation” implies that: 1) Double-taxation should be avoided at all costs and 2) The end customer / consumer will always be taxed on their purchase.

The first implication is not relevant to this discussion. Addressing the second concept is the goal of this discussion.

While the goal of a resale exemption is for only the end consumer to pay sales tax, there are numerous circumstances that will cause the end consumer to not pay sales tax. For example, purchases by government entities are always exempt from sales tax. Many states offer sales tax exemption on purchases by non-profit organizations. And in some states, specific products like groceries or clothing are exempt from sales tax.

The point is that in each of these cases, the reseller is still entitled to exemption on its purchase of goods from its supplier, based solely on the fact that the reseller will indeed be reselling the purchased goods. The end consumer may end up being exempt from sales tax as a government entity, but that doesn't change the exemption claim by the reseller.

This same logic applies to the drop-shipping scenario above. If a reseller provides evidence that it is in fact a reseller of the goods in question, it should be entitled to a resale certificate allowing exempt purchase of good(s) from its supplier. The reseller may not be required to charge sales tax for a variety



of reasons; overall not meeting nexus threshold into Alaska or selling to an exempt government entity. Regardless of the reasons for the reseller to not charge sales tax to the end consumer, it is still purchasing goods for the purpose of resale and should be exempt on its purchase from the supplier.

### **Conclusion**

The guidance being presented in 2022.01 allows remote sellers into Alaska to follow the same general principles for resale exemption and drop-shipping as is common across the lower-48. It is very important for the Commission to follow standards that are common in the lower-48 when possible. Taking a position other than the one outlined in 2022.01 would likely create a number of complaints by national companies that are used to obtaining sales tax exemption in similar scenarios in other states.



## Interpretation 2022.01

### Transactions involving Drop-Shipments into ARSSTC Member Jurisdictions

#### **Issue:**

What is a drop-shipment and how are each of the parties involved in the drop-shipment affected by sales tax collection requirements on remote sales?

#### **Background:**

The typical drop-shipment involves three parties:

1. The customer
2. Seller A
3. Seller #2 aka "the shipper/supplier"

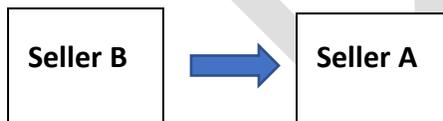
Very simply, the customer makes a purchase from the seller. The seller then purchases from the shipper/supplier and directs the shipper/supplier to ship the good(s) directly to the customer. This in essence creates two separate transactions as outlined below:

#### **Transaction #1**



In Transaction #1, Seller A makes a sale to the buyer. Seller A collects the buyer's delivery / shipping address information.

#### **Transaction #2**



In Transaction #2, Seller A purchases good(s) from Seller B to fulfill the order placed in Transaction #1. Seller A provides the buyer's delivery / shipping address from Transaction #1. Seller B is considered the drop shipper.

#### **Guidance for Transaction #1**

Transaction #1 is relatively simple as there are only two factors that must be considered:



## Interpretation 2022.01

1. Does Seller A meet the economic nexus threshold for collecting sales tax as a remote seller, and
2. Is the buyer's delivery/shipping address in an ARSSTC member jurisdiction?

Section 040(A) of the Uniform Remote Seller Sales Tax code sets the economic nexus threshold at \$100,000 in gross sales or 200 individual transactions delivered statewide into Alaska, in either the current or previous calendar year. A remote seller would only be required to register with the Commission and collect sales tax once it reaches either of those economic nexus measures.

Furthermore, any sales tax to be collected by the remote seller is based on the point of delivery. Please see [Interpretation 2020.05 – Sourcing of Goods](#) or Interpretation 2021.05 – Remote Services & Sourcing for more information on point of delivery and sourcing of a transaction.

### Transaction #1 Summary

In the transaction #1 scenario, Seller A would only be required to collect sales tax as a remote seller if it meets the economic nexus threshold outlined above and if the final point of delivery is in a jurisdiction that is a member of the ARSSTC.

### Guidance for Transaction #2

Transaction #2 is more complicated as it brings in resale elements.

1. Does Seller B meet the economic nexus threshold for collecting sales tax as a remote seller,
2. Is the delivery/shipping address in an ARSSTC member jurisdiction, and
3. What resale exemption documentation should Seller B obtain from Seller A to exempt transaction #2 from sales tax?

The economic nexus threshold and the delivery/shipping address questions have the same implications as outlined for Transaction #1. However, transaction #2 has an added element of possible resale exemption claim by Seller A on its purchase from Seller B.

Following are the possible types of resale documentation that are acceptable for Seller B to exempt its sale to Seller A:

- **Resale exemption certificate issued to Seller A by the local Alaskan taxing authority** where the transaction is sourced.
  - For more discussion on local Alaskan taxing authority exemption certificates, please see [Interpretation 2020.10 – Entity Based Exemption Certificates](#).



### Interpretation 2022.01

- **ARSSTC Remote Reseller Sales Tax Exemption Certificate** issued to Seller A by the ARSSTC.
  - [ARSSTC Remote Reseller Certificate application](#)
- **Streamlined Certificate of Exemption** for Seller A that outlines the appropriate Type of business and reason for exemption pertaining to the transaction.
  - Note that neither the State of Alaska nor the ARSSTC are members of the SSUTA but claims for resale exemption by Seller A using the Streamlined certificate will be accepted for audit purposes by ARSSTC as appropriate documentation.
- **Uniform Sales & Use Tax Resale Certificate – Multijurisdiction** (from the Multistate Tax Commission) presented by Seller A.
  - Claims for resale exemption by Seller using the Uniform Resale Certificate will be accepted for audit purposes by ARSSTC as appropriate documentation.

#### Transaction #2 Summary

In the Transaction #2 scenario, Seller B would only be required to collect sales tax on its sale to Seller A if the following two conditions are met:

- Seller B has exceeded the economic nexus threshold outlined in the Uniform Code and,
- Transaction #2 has a point of delivery located in an ARSSTC member jurisdiction.

If both of these conditions are met, Seller B has a requirement to charge sales tax on its sale to Seller A, **unless** Seller A provides appropriate documentation supporting their claim for resale.

Several forms of resale exemption documentation may be accepted by Seller B, including the Streamlined Certificate of Exemption and the Uniform Sales & Use Tax Resale Certification from the MTC.



**To: ARSSTC Policy Committee**

**From: Clinton Singletary, Statewide Municipal Sales Tax Director**

**Date: April 19, 2022**

**Re: Tax Cap uniformity**

The tax cap or maximum tax is one of the most challenging elements of local sales tax codes for remote sellers to follow. While I think remote sellers would just prefer that local communities do away with the tax caps, that will definitely not be happening.

An alternative solution may be to establish some measure of uniformity in the various tax caps that exist across Commission member jurisdictions. The primary goal would be to achieve uniformity in the application of tax caps i.e. each jurisdiction with a cap should have a single item cap, single service cap and single transaction cap. Along with this there should be uniformity in the definitions of single item, single service and single transaction.

Variance in the cap levels should be ok. Allowing a cap that is limited to a specific type of purchase such as a snowmachine or ATV may be an acceptable exception. Jurisdictions that do not currently have a tax cap of any kind would not be required to adopt a cap.

This would likely require code changes at the local level along with additional definitions in the Uniform Code pertaining to a single item, single service and single transaction.

Current # of member jurisdictions some type of tax cap: **28**

# of member jurisdictions that do not have a transaction level cap: **10**

# of member jurisdictions that only have an item specific tax cap: **3**

Questions for the Policy Committee to consider:

- How feasible would this be to pursue?
- Does it matter if a tax cap is treated as an exemption vs a “maximum tax” clause in the local code?
- Other concerns from the PC?