

Alaska Remote Seller Sales Tax Commission

Commission Board Meeting

June 18th, 2020 * 1:00 p.m. – 3:00 p.m.

- I. Consent Agenda
 - a. Approval of Agenda
 - b. Approval of Minutes
- II. AML Report
- III. Finance Committee
 - a. Action on Commission FY21 Budget
- IV. Policy Committee
- V. Commission Comments
- VI. Adjourn

ARSSTC BOARD MEETING

Teleconference

May 7th, 2020

Board Present:

- Jeff Rogers, City and Borough of Juneau
- Troy Tankersley, City of Wasilla
- Scott Bloom, City of Kenai
- Brandi Harbaugh, Kenai Peninsula Borough
- Cynna Gubatayao, Ketchikan Gateway Borough
- Stephanie Queen, City of Soldotna
- Mike Tvenge, City of Kodiak

Commission Members Present (with apologies for technical difficulties):

- Bryant Hammond, City of Nome
- Jon Bolling, City of Craig
- Gina Davis, City of Palmer
- Jody Tow, Petersburg Borough
- Ken Fay, City of Cordova
- Layton Lockett, City of Adak
- Phoebe Vanselow, City of Gustavus
- Tom Williams, City of Gustavus
- Julie Liew, City of Kodiak
- Jon Erickson, City and Borough of Yakutat
- Phillip Zapadil, City of Saint Paul

Others in attendance:

- Kara Johnson, Sales Tax Administrator
- Dawn Wesley, Program Manager
- Nils Andreassen, Executive Director

President Rogers called the May 7th, 2020, Alaska Remote Sales Tax Committee Board meeting to order at 11:02 a.m.

I. Roll Call

II. Approval of Agenda

Motion to approve made by Troy, seconded by Stephanie. Passed with no objection.

III. Approval of February 21st, 2020 Minutes

Motion to approve made by Cynna, seconded by Troy. Passed with no objection.

IV. Executive Directors Report

- a. 20 jurisdictions and 234 sellers
- b. 29,000 collected in March
- c. AMSTP working to add sellers and Jurisdictions

ARSSTC BOARD MEETING

Teleconference

May 7th, 2020

- V. **Consideration of Actions**
- a. **Separating revenue streams**
Landye Bennett memo was presented and discussion about MUNIREvs proposal identified some follow up work to be completed.
 - b. **Refunds**
The issues of item exemptions and resale certificates were discussed, with a policy committee to further evaluate. Resale certificates should occur at the local jurisdictions, and if refunds are necessary the Commission should develop a process to support members.
 - c. **Early Filer Discount – asking for the approval for additional funding**
To accommodate members with multiple jurisdictions and discounts spread out over quarter, software updates need to occur. Concern about setting precedent and whether individual jurisdictions should pay or Commission. For now, Commission authorizes AML to implement necessary changes (Cynna, Stephanie; limited to preexisting conditions; passes). Further guidance needs to be developed for excess software expenditures.
 - d. **Informational - Model Code-** Nils explained the purpose
 - e. **Informational - Alcohol and tobacco remote sales tax collection** – would be a separate return for jurisdictions
- VI. **Annual Filing Option (Code revision)** – to be discussed in the future by policy committee
- VII. **Informational – Supplemental fee of members** requested in response to COVID-19 interruption of operations for sellers and jurisdictions, resulting in loss to Commission
- VIII. **Interpretations – for reference**
- a. Jeff asked for a policy committee to work through these questions that come to the Commission
- Brandi asked for the FY21 Budget for a June meeting
- IX. **Adjournment**
Meeting adjourned at 10:30 am

Respectfully submitted, Dawn Wesley, Sales Tax Program Manager

Approved

Cynna Gubatayao



The Alaska Remote Sellers Sales Tax Commission is making good progress – it’s almost starting to feel like a real thing! For staff, it is very definitely a real thing.

For the May filing, which just closed for April collection, we took in 9 times what we had for March. A lot of that is due to one seller, but the jump is significant. We expect another jump next month as more sellers come on, additional jurisdictions will have been effective, and overall compliance is improving.

Dashboard for May:

- Jurisdictions 22 – We’re hoping Ketchikan will adopt the Code soon!
- Sellers 270 – One bulk filer may soon register as many as 100 sellers.
- Gross Sales \$6,966,011
- Net Taxable \$5,955,210 – It’s interesting to look at exemption effects...
- Sales Tax remitted \$217,046

If we look just at where May left us, we get to about \$3 million in new funds annually for this effort. It’s a long way from where we want to be, but it is also meaningful. I want to pause and recognize and thank you for your participation and collaboration throughout. This has always been about the group effort and its success in moving forward will continue to depend on us working together.

Our current projections double monthly sales tax remitted by the end of this fiscal year, and double again for FY21. There’s probably equal parts careful analysis and hope that go into those projections, but I don’t think it is unreasonable. It’s interesting to compare some of these projections to our initial analysis – once we have a few more months of data to work with then we should be able to conduct these projections with more accuracy.

One of the most helpful things you can do is to communicate to sellers in your community that they should be aware of new sales tax rules in other communities, if they are selling outside where they have physical presence. Kenai has been most effective at this, from what we can tell.

Our priorities for the next six months:

- Educating Anchorage sellers about their compliance – this has been delayed during the economic crisis facing the state but will be a significant source of growth
- Adding small, rural jurisdictions – we’ve had to develop an entirely new sales tax code for these, which will replace outdated versions they currently use and adopt by reference the Uniform Code
- Registering more remote sellers – some of the larger and bulk filers have indicated technical challenges because of their current software structures; this requires time and education

The Board has just added a committee to work through the many policy and procedures that seem to come up regularly. We’ll get updated information out to members as we finalize answers for questions that continue to come up. Our finance committee, too, has been hard at work, and finalized an FY21 budget that keeps rates where they are, for now. We hope we can reduce these soon. The budget is still based on conservative revenues and flat expenses. AML’s loaned capital to start this up remains a big factor in keeping these rates as low as possible, but we anticipate that the need for this investment will decrease in the next month or so, and these costs to AML will reduce over time and the program overall will become sustainable.

ARRSTC
as of 4/31/20
FY2021 Proposed Budget

| | AML | | ARRSTC | | | | | | \$ Change 20 Projected | \$ Change 20 Projected |
|---|--|----------------------------|---------------------------|-----------------------------|------------------------------|------------------------------|-----------------------|---------------------|---------------------------|---------------------------|
| | 2020 Actual AML Remote sales tax | 2020 Original Budget | 2020 Actual 4/31/20 | 2020 Projected Actual | 2021 Proposed Budget A | 2021 Proposed Budget B | vs 21 Proposed A | vs 21 Proposed A | | |
| Estimated sales tax collection | \$ - | \$ 12,000,000.00 | \$ 30,000.00 | \$ 946,000.00 | \$ 8,000,000.00 | \$ 10,000,000.00 | \$ 7,054,000.00 | 746% | | |
| Members | - | 15.00 | 19.00 | 19.00 | 50.00 | 50.00 | 31.00 | 163% | | |
| Commission Fee Rate | - | 5.85% | 5.85% | 5.85% | 5.00% | 5.00% | - | - | | |
| Revenues: | | | | | | | | | | |
| Commission Fee Revenue | \$ - | \$ 150,000.00 | \$ 1,719.00 | \$ 47,300.00 | \$ 400,000.00 | \$ 500,000.00 | \$ (352,700.00) | - | | |
| Remote Sales Tax donations from Jurisdictions | 63,762.00 | - | - | - | - | - | - | - | | |
| MuniRev Fees (12.8,4%) | - | 360,000.00 | 3,528.00 | 113,520.00 | 960,000.00 | 1,200,000.00 | (846,480.00) | - | | |
| TTR Fees (75,1,1.25%) | - | 37,500.00 | 367.50 | 11,825.00 | 100,000.00 | 125,000.00 | (88,175.00) | - | | |
| Data Management Fee (\$1,000ea) - AML repayment | - | 15,000.00 | 6,714.00 | 15,000.00 | 55,000.00 | 55,000.00 | (40,000.00) | - | | |
| AML Contribution - MuniRev Implementation | - | 100,000.00 | 100,000.00 | 100,000.00 | - | - | 100,000.00 | 100% | | |
| AML TTR Loan (repayable) | - | 100,000.00 | 100,000.00 | 100,000.00 | - | - | - | - | | |
| AML loan (repayable) | - | 45,008.00 | 81,356.52 | 102,252.00 | - | - | 102,252.00 | 100% | | |
| Interest earnings | - | - | - | - | - | - | - | - | | |
| Total Revenues | 63,762.00 | 807,508.00 | 293,685.02 | 489,897.00 | 1,515,000.00 | 1,880,000.00 | (1,025,103.00) | 200% | | |
| Expenditures: | | | | | | | | | | |
| Personnel | | | | | | | | | | |
| AML wages/expenses prior to contract | 31,974.05 | - | - | - | - | - | - | - | | |
| Regular Wages | - | 89,976.00 | 52,460.00 | 76,762.00 | 256,200.00 | 256,200.00 | (179,438.00) | - | | |
| Retirement | - | - | - | 5,000.00 | - | - | 5,000.00 | 100% | | |
| Health Insurance | - | - | - | 18,623.00 | - | - | 18,623.00 | 100% | | |
| Total: Personnel | 31,974.05 | 89,976.00 | 52,460.00 | 100,385.00 | 256,200.00 | 256,200.00 | (155,815.00) | - | | |
| Services | | | | | | | | | | |
| Contract Services | 4,743.76 | - | - | - | - | - | - | - | | |
| MuniRev Software Implementation (1) | - | 100,000.00 | 103,750.00 | 110,000.00 | - | - | 110,000.00 | 100% | | |
| MuniRev Software Contract (12.8,4%) | - | 360,000.00 | 3,528.00 | 113,520.00 | 960,000.00 | 1,200,000.00 | (846,480.00) | - | | |
| TTR Software implementation (1) | - | 100,000.00 | 100,000.00 | 100,000.00 | - | - | 100,000.00 | 100% | | |
| TTR Software Contract (75,1,1.25%) | - | 37,500.00 | 367.50 | 11,825.00 | 100,000.00 | 125,000.00 | (88,175.00) | - | | |
| AML - TTR Data Management | - | 15,000.00 | 6,714.00 | 15,000.00 | 55,000.00 | 55,000.00 | (40,000.00) | - | | |
| AML - Loan expense repayment | - | - | - | - | 50,000.00 | 100,000.00 | (50,000.00) | - | | |
| AML Contract Overhead (8%) | - | 11,907.00 | 5,876.00 | 10,339.00 | 25,496.00 | 25,496.00 | (15,157.00) | - | | |
| Governance Transport/Subsistence | - | 2,000.00 | 1,048.75 | 1,049.00 | 5,000.00 | 5,000.00 | (3,951.00) | - | | |
| Insurance Premium | - | 10,000.00 | 10,278.77 | 10,279.00 | 15,000.00 | 15,000.00 | (4,721.00) | - | | |
| Banking Fees | - | 5,000.00 | 117.00 | 500.00 | 2,500.00 | 2,500.00 | (2,000.00) | - | | |
| Legal Services | 30,849.00 | 25,000.00 | 9,545.00 | 17,000.00 | 30,000.00 | 30,000.00 | (13,000.00) | - | | |
| Audit Services | - | 25,000.00 | - | - | 10,000.00 | 10,000.00 | (10,000.00) | - | | |
| Total: Services | 40,745.13 | 691,407.00 | 241,225.02 | 389,512.00 | 1,252,996.00 | 1,567,996.00 | (863,484.00) | - | | |
| Capital Outlay | | | | | | | | | | |
| Office Equipment | 3,915.00 | - | - | - | - | - | - | - | | |
| Furniture | 413.57 | - | - | - | - | - | - | - | | |
| Total: Services | 4,328.57 | - | - | - | - | - | - | - | | |
| Total Expenditures | 77,047.75 | 781,383.00 | 293,685.02 | 489,897.00 | 1,509,196.00 | 1,824,196.00 | (1,019,299.00) | #VALUE! | | |
| Change in Fund Balance | (13,285.75) | 26,125.00 | - | - | 5,804.00 | 55,804.00 | (5,804.00) | - | | |
| Beginning Fund Balance | - | - | - | - | - | - | - | - | | |
| Ending Fund Balance | \$ (13,285.75) | \$ 26,125.00 | \$ - | \$ - | \$ 5,804.00 | \$ 55,804.00 | \$ (5,804.00) | - | | |
| | <i>AML Contribution</i> | | | | | | | | | |

| | | | | | | |
|--|--------------|---------------|--------------|---------------|---------------|---------------|
| Minimum Fund Balance | \$ 15,410.00 | \$ 156,277.00 | \$ 58,737.00 | \$ 97,979.00 | \$ 301,839.00 | \$ 364,839.00 |
| Difference Between Ending Fund balance and Minimum fund balance threshold | (28,695.75) | (130,152.00) | (58,737.00) | (97,979.00) | (296,035.00) | (309,035.00) |
| Maximum Fund Balance | 19,262.00 | 195,346.00 | 73,421.00 | 122,474.00 | 377,299.00 | 456,049.00 |
| Difference Between Ending Fund balance and Maximum fund balance threshold | \$ 32,547.69 | \$ 169,220.75 | \$ 73,421.26 | \$ 122,474.25 | \$ 371,495.00 | \$ 400,245.00 |

| | | | | | |
|---|----------------------|----------------------|---------------------|---------------------|---------------------|
| AML Loan Outstanding | Beginning Balance | \$ - | \$ - | \$ 187,252.00 | \$ 187,252.00 |
| Bank Acct AML Cash loan (to be repaid) | | 10,200.00 | 10,200.00 | - | - |
| AML cash loan for expenditures (to be repaid) | | 71,156.52 | 92,052.00 | (50,000.00) | (100,000.00) |
| TTR data management (to be repaid) | | 100,000.00 | 100,000.00 | - | - |
| TTR recoup (\$1,000 ea Jur) | | (6,714.00) | (15,000.00) | (55,000.00) | (55,000.00) |
| Outstanding | \$ 174,642.52 | \$ 187,252.00 | \$ 82,252.00 | \$ 32,252.00 | \$ 32,252.00 |

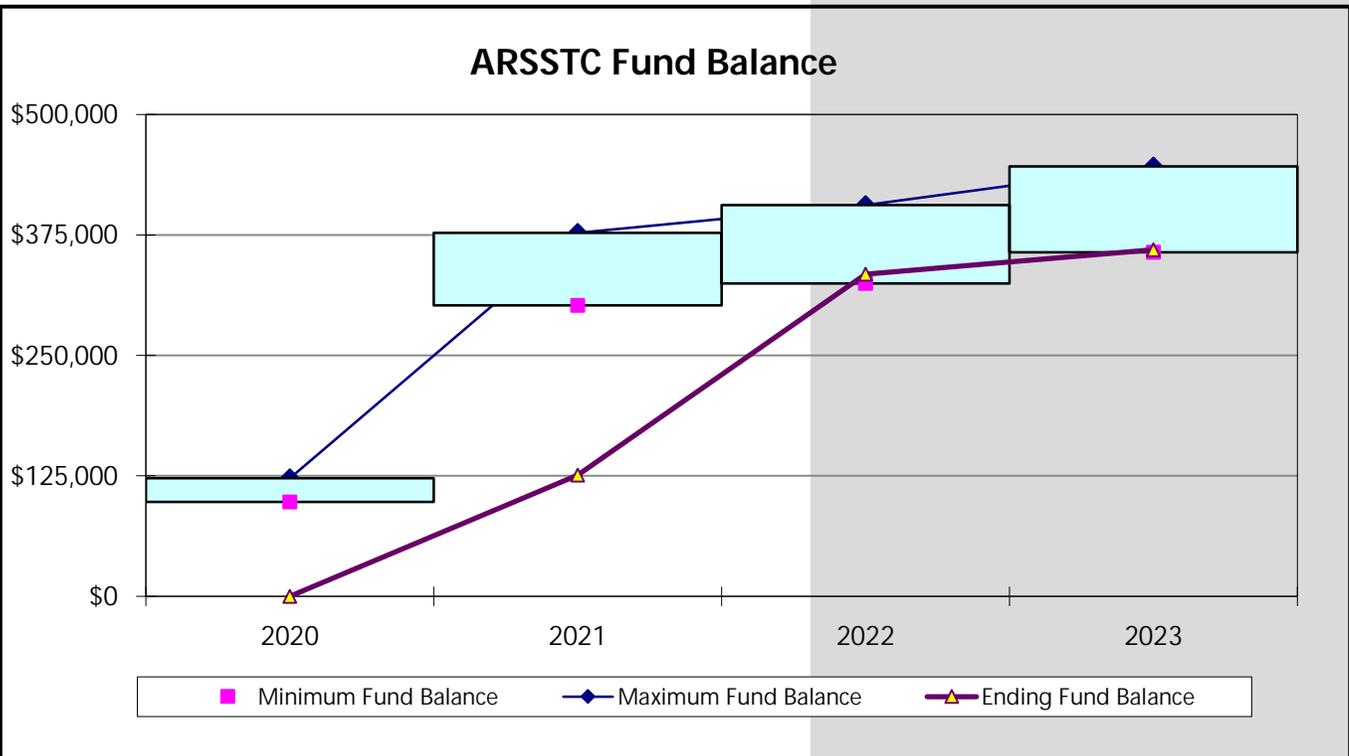
ARRSTC
as of 4/31/20
FY2021 Proposed Budget

| | 2020 Projected Actual | 2021 Proposed Budget A | 2022 Projected | 2023 Projected |
|---|-----------------------------|------------------------------|---------------------|---------------------|
| Estimated sales tax collection | \$ 946,000.00 | \$ 8,000,000.00 | \$ 9,000,000.00 | \$ 10,000,000.00 |
| Members | 19 | 50 | 60 | 70 |
| Commision fee Rate | 5.85% | 6.50% | 6.50% | 4.30% |
| Revenues: | | | | |
| Commission Fee Revenue | \$ 47,300.00 | \$ 520,000.00 | \$ 585,000.00 | \$ 430,000.00 |
| Remote Sales Tax donations from Jurisdictions | - | - | - | - |
| MuniRev Fees (12,8,4%) | 113,520.00 | 960,000.00 | 1,080,000.00 | 1,200,000.00 |
| TTR Fees (.75,1,1.25%) | 11,825.00 | 100,000.00 | 112,500.00 | 125,000.00 |
| Data Management Fee (\$1,000ea) - AML repayment | 15,000.00 | 55,000.00 | 55,000.00 | 55,000.00 |
| AML Contribution - MuniRev Implementation | 100,000.00 | - | - | - |
| AML TTR Loan (repayable) | 100,000.00 | - | - | - |
| AML loan (repayable) | 102,252.00 | - | - | - |
| Interest earnings | - | - | - | - |
| Total Revenues | 489,897.00 | 1,635,000.00 | 1,832,500.00 | 1,810,000.00 |
| Expenditures: | | | | |
| Personnel | | | | |
| AML wages/expenses prior to contract | - | - | - | - |
| Regular Wages | 76,762.00 | 256,200.00 | 261,324.00 | 266,550.48 |
| Retirement | 5,000.00 | - | - | - |
| Health Insurance | 18,623.00 | - | - | - |
| Total: Personnel | 100,385.00 | 256,200.00 | 261,324.00 | 266,550.48 |
| Services | | | | |
| Contract Services | - | - | - | - |
| MuniRev Software Implementation (1) | 110,000.00 | - | - | - |
| MuniRev Software Contract (12,8,4%) | 113,520.00 | 960,000.00 | 1,080,000.00 | 1,200,000.00 |
| TTR Software implementation (1) | 100,000.00 | - | - | - |
| TTR Software Contract (.75,1,1.25%) | 11,825.00 | 100,000.00 | 112,500.00 | 125,000.00 |
| AML - TTR Data Management | 15,000.00 | 55,000.00 | 55,000.00 | 55,000.00 |
| AML - Loan expense repayment | - | 50,000.00 | 27,252.00 | 50,000.00 |
| AML Contract Overhead (8%) | 10,339.00 | 25,496.00 | 25,496.00 | 25,496.00 |
| Governance Transport/Subsistence | 1,049.00 | 5,000.00 | 5,000.00 | 5,000.00 |
| Insurance Premium | 10,279.00 | 15,000.00 | 15,000.00 | 15,000.00 |
| Banking Fees | 500.00 | 2,500.00 | 2,500.00 | 2,500.00 |
| Legal Services | 17,000.00 | 30,000.00 | 30,000.00 | 30,000.00 |
| Audit Services | - | 10,000.00 | 10,000.00 | 10,000.00 |
| | - | - | - | - |
| | - | - | - | - |
| Total: Services | 389,512.00 | 1,252,996.00 | 1,362,748.00 | 1,517,996.00 |
| Capital Outlay | | | | |
| Office Equipment | - | - | - | - |
| Furniture | - | - | - | - |
| Total: Services | - | - | - | - |

| | | | | |
|-------------------------------|------------|---------------|---------------|---------------|
| Total Expenditures | 489,897.00 | 1,509,196.00 | 1,624,072.00 | 1,784,546.48 |
| Change in Fund Balance | - | 125,804.00 | 208,428.00 | 25,453.52 |
| Beginning Fund Balance | - | - | 125,804.00 | 334,232.00 |
| Ending Fund Balance | \$ - | \$ 125,804.00 | \$ 334,232.00 | \$ 359,685.52 |

| | | | | |
|--|---------------|---------------|---------------|---------------|
| Minimum Fund Balance | \$ 97,979.00 | \$ 301,839.00 | \$ 324,814.00 | \$ 356,909.00 |
| Difference Between Ending Fund balance and Minimum fund balance threshold | (97,979.00) | (176,035.00) | 9,418.00 | 2,776.52 |
| Maximum Fund Balance | 122,474.00 | 377,299.00 | 406,018.00 | 446,137.00 |
| Difference Between Ending Fund balance and Maximum fund balance threshold | \$ 122,474.25 | \$ 251,495.00 | \$ 71,786.00 | \$ 86,451.10 |

| | | | | |
|---|----------------------|---------------------|--------------|-------------|
| AML Loan Outstanding | \$ - | \$ 187,252.00 | \$ 82,252.00 | \$ - |
| Bank Acct AML Cash loan (to be repaid) | 10,200.00 | - | - | - |
| AML cash loan for expenditures (to be repaid) | 92,052.00 | (50,000.00) | (27,252.00) | - |
| TTR data management (to be repaid) | 100,000.00 | - | - | - |
| TTR recoup (\$1,000 ea. Jur) | (15,000.00) | (55,000.00) | (55,000.00) | - |
| | \$ 187,252.00 | \$ 82,252.00 | \$ - | \$ - |



FY21 Budget Narrative

We have broken out AML's direct expenses alongside the initial investment that members made, just to account for that for you

Projected actual includes May and June, which we don't have numbers for yet

Sales tax collection in the FY21 budget is based on early data from FY20 and presented as two versions.

Revenues reflect basic Commission, MUNIRevs, TTR fees, as well as the TTR recoup. The Commission fee is decreased by .85%

Personnel

- This reflects an older assumption that we would be hiring an additional staff member in FY21 to assist with audit/compliance work – this is still to be determined
- Current salary and benefits is \$184,742.90, for FY21 this should be \$188,292.90
- This leaves us some room (\$67,000) to grow if we want to add an entry-level position to assist

Other expenditures

- AML loan repayment is a decision point for the Commission – the two numbers provided are based on general assumptions about what the Commission may be able to afford
- Overhead is based on 8% of personnel, governance, insurance, banking, legal, audit services
- Legal services were high this year as we established the Commission; they may trend down in FY21 but we can't be sure what else is coming – this feels like a safe number just in case

Table of Contents of Interpretations

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2020.05 FREIGHT FORWARDING FROM OUT OF STATE 3.18.2020

2020.06 MULTI-LEVEL MARKETING INDEPENDENT SALES REPRESENTATIVE AS PHYSICAL PRESENCE 6.12.2020

2020.07 CLARIFYING PHYSICAL PRESENCE WITH REGARDS TO .COM/E-COMMERCE AND ASSOCIATED BRICK AND MORTAR BUSINESSES 6.12.2020

2020.08 CLARIFYING PHYSICAL PRESENCE WITH REGARDS TO RENTAL EQUIPMENT AND SERVICES 6.12.2020

2020.09 WHO IS RESPONSIBLE FOR ISSUING REMOTE SELLER RESALE CERTIFICATES? 6.12.2020

2020.10 WHO IS RESPONSIBLE FOR ISSUING ENTITIY-BASED EXEMPTION CERTIFICATES? 6.12.2020

2020.11 THRESHOLD DETERMINATION FOR ALASKA-BASED BUSINESSES 6.12.2020

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Interpretation 2020.06 MULTI-LEVEL MARKETING INDEPENDENT SALES REPRESENTATIVE AS PHYSICAL PRESENCE 6.12.2020

Issue:

Clarifying remote seller versus physical presence with regards to multi-level marketing (MLM) independent sales consultants (ISR). The ISR is considered an agent who may or may not have inventory to exchange for payment, does this meet qualification for physical presence?

Discussion:

The Committee noted that the definition of physical presence is not a national standard and each state is able to set their own definitions. ARSSTC set their standard stated below. Jurisdictions view ISRs with physical inventory as absolutely physical presence and ISR without inventory also as physical presence, based on the agent's presence. Feedback from sellers is that it is difficult to separate physical presence from remote sales. Due to the diversified nature of MLM companies, requiring them to remit sales tax through the ARSSTC Portal would likely increase tax compliance. There are a number of ISRs who facilitate sales but do not exchange inventory for payment. The Uniform Code could be revised to (i) define MLM companies and (ii) require remittance through the ARSSTC Portal for all mail order or internet sales.

Recommendation:

Yes, the presence of an ISR meets the definition for physical presence agent and sales tax should be filed directly with the jurisdiction for any transaction the consultant facilitates or gets credit for.

Company charges sales tax on the retail price at the local jurisdiction rate to the ISR when ISR buys product at the wholesale price.

Company remits sales tax to the jurisdiction where the ISR is located.

If the product is purchased solely on a website using the ISR's portal, the Company charges sales tax based on the rate of the delivery address and files with that jurisdiction accordingly.

NOTE: some jurisdictions will require the ISR to obtain a local business license. Check regulations in the local jurisdiction. If the ISR is required to get a local license, they will claim all their sales as tax exempt under the resale exemption since the parent company is filing directly with the jurisdiction. The ISR may need to get a resale certificate from the local jurisdiction if required by local rules.

Rationale:

It is well established that States (and thus local jurisdictions) can claim sufficient nexus to tax MLM companies where the MLM company's only connection is through ISRs.

An ISR, regardless of inventory, meets the definition of company agent. The definition of Physical Presence in the Uniform Code includes the situation where a seller:

"[s]olicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the local taxing jurisdiction or engages in activities in this state that are significantly associated with the seller's ability to establish or maintain a market for its products in this state."

Accordingly, Section 230(C) of the Uniform Code establishes that the MLM company should report and remit directly to the taxing jurisdiction if the consultant is operating in that taxing jurisdiction.

Interpretation 2020.07 CLARIFYING PHYSICAL PRESENCE WITH REGARDS TO .COM/E-COMMERCE AND ASSOCIATED BRICK AND MORTAR BUSINESSES 6.12.2020

Issue:

Clarifying remote seller versus physical presence with regards to .com/e-commerce and associated brick and mortar businesses

Discussion:

Companies can have a brick and mortar store and conduct e-commerce into a jurisdiction. Companies may have separate EIN for their e-commerce versus brick and mortar stores; they may file two separate returns for each line of business or a consolidated return which includes all revenue streams. Jurisdictions view all transactions for a company that has a brick and mortar store in their locality as physical presence regardless of individual EIN. Feedback from sellers is that it is difficult to separate physical presence from remote sales. Is there a bright line test to distinguish between e-commerce and brick and mortar?

Recommendation:

No definitive recommendation from Policy Committee; local interest maximizes the extent to which a seller should be considered to have physical presence.

Staff recommendation is if the company has a separate EIN, the e-commerce business should be considered a remote sale, even if there is a physical brick and mortar in the jurisdiction.

Rationale:

A unique EIN distinguishes a company as a unique entity, and it should be assessed for economic nexus based on its own revenue streams.

While technically a business may be considered by the jurisdiction to have physical presence based on its parent or affiliate companies, AML believes that the request to split revenues streams by physical and remote will increasingly lead to perception of an undue burden. To the extent that we can simplify this – by allowing Walmart.com to file with the Commission and Walmart, Inc. to file directly with jurisdictions – then we may avoid this challenge. The current practice is based on the belief that sophisticated companies have the technical ability to do this. We have to keep in mind that they don't have to do this in any other state.

2020.08 CLARIFYING PHYSICAL PRESENCE WITH REGARDS TO RENTAL EQUIPMENT AND SERVICES 6.12.2020

Issue:

Clarifying remote seller versus physical presence with regards to rental equipment

Discussion:

The definition of Physical Presence in the Uniform Code includes the situation where a seller:

“[r]ents or leases property located within the boundaries of the local taxing jurisdiction.

Accordingly, Section 230(C) of the Uniform Code establishes that the rental company should report and remit directly to the taxing jurisdiction where the equipment is rented or leased.

Rental equipment or leased property includes tangible personal property, excluding digital software, that is eventually returned or purchased after use. This includes such property such as video rental kiosks, cell phone towers, construction equipment, copy or postage machines, specialized cell phone equipment, etc.

Non-tangible property includes digital software, digital subscriptions, cloud-based services, networking services, gaming and entertainment subscriptions, pay-as-you-go services such as storage, networking, and virtualization.

Recommendation:

Yes, tangible property rented or leased meets the definition for physical presence and sales tax should be filed directly with the jurisdiction where the property is used.

Rental or leases of digital software, including subscriptions, Software as a Service (SaaS), Business-to-consumer SaaS (B2C SaaS), Platform as a Service (PaaS) and Infrastructure as a Service (IaaS) are considered remote sales and should be filed through the ARSSTC portal.

Rationale:

Tangible property is definitively physical, therefore sales around short-term access to the property should be considered physical presence. Digital services are not tangible and therefore considered remote sales.

Interpretation 2020.09 WHO IS RESPONSIBLE FOR ISSUING REMOTE SELLER RESALE CERTIFICATES? 6.12.2020

Issue:

Who is responsible for issuing resale exemption certificates for remote sellers?

Discussion:

The Uniform Code Section 080.I. requires that sellers obtain proper documentation for tax-exempt sales, this is usually in the form of a resale card:

“Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase; the date of the purchase; the name of the person making the purchase; the organization making the purchase; the total amount of the purchase; and the amount of sales tax exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that portion of the claim of exemption for which no documentation is provided.”

Exemptions are managed by jurisdictions, but some will only issue resale certificates to businesses with physical presence in the jurisdiction. Other jurisdictions do not have staff capacity to issue resale certificates. ARSSTC now has remote sellers who need a resale certificate, yet they do not have physical presence in any jurisdictions.

Recommendation:

Businesses that have physical presence in a jurisdiction should obtain exemption or resale certificates from that jurisdiction. Businesses that have no physical presence in Alaska should obtain exemption or resale certificates from ARSSTC. Policy Committee will develop a robust resale certificate application that meets the criteria for jurisdictions.

Rationale:

Jurisdictions are responsible for physical presence sales tax and should therefore issue resale certificate to their local sellers. ARSSTC is responsible for remote sellers sales tax and should therefore issue the resale certificate to those that do not have presence in Alaska (or they have presence in a non-participating jurisdiction). The ARSSTC resale certificate shall be honored by all sellers throughout Alaska.

Interpretation 2020.10 WHO IS RESPONSIBLE FOR ISSUING ENTITY-BASED EXEMPTION CERTIFICATES? 6.12.2020

Issue:

Who is responsible for issuing exemption certificates for entities (seniors, non-profit, government)?

Discussion:

The Uniform Code Section 080.I. requires that sellers obtain proper documentation for tax-exempt sales, this is usually in the form of a resale card:

“Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase; the date of the purchase; the name of the person making the purchase; the organization making the purchase; the total amount of the purchase; and the amount of sales tax exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that portion of the claim of exemption for which no documentation is provided.”

Exemptions are managed by jurisdictions. Some jurisdictions do not have staff capacity to issue exemption certificates. Per the ARSSTC remote sellers sales tax rules, any valid exemptible purchase needs to have an exemption certificate that can be on file with the seller and provided to ARSSTC per an audit review.

Recommendation:

Jurisdictions are responsible for physical presence sales tax and should therefore issue the exemption certificate. For those jurisdictions that do not have staff capacity to administer entity-based tax exemption cards, Alaska Municipal League (AML) can provide assistance. This falls outside the Commission's remit but may be addressed by AML through the Alaska Municipal Sales Tax Program as a shared service based on a relevant fee schedule.

Rationale:

As much of Alaska's commerce occurs through remote sellers, it is imperative these exempt buyers are able to obtain valid exemption certificates. AML has the staff capacity to help implement exemption certificates for jurisdictions that need assistance. This advances overall compliance in Alaska and strengthens local governments.

Interpretation 2020.11 THRESHOLD DETERMINATION FOR ALASKA-BASED BUSINESSES 6.12.2020

Issue:

How to determine threshold for remote seller requirements for Alaska based businesses who have an e-commerce?

Discussion:

Per the definition of Remote Seller below, Alaska-based businesses should use only their statewide remote sales (regardless of taxability of buyer) to determine economic nexus threshold. Remote sales include a brick-and-mortar store shipping supplies, products or providing services to communities where they do not have real or tangible property, inventory, or a local representative.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.

Threshold determination for in-state sellers should consider only the remotely provided services. If the business has in-person or tangible property sales, those are considered physical presence and should be filed directly with the jurisdiction.

Threshold determination and taxation must consider point of delivery and if there is a freight forward via a common carrier. When there is a freight forward via a common carrier, the taxation is based on point of delivery to the freight forwarder.

If a business conducts solely tax-exempt sales yet meets the statewide economic nexus threshold, they are still required to register and file sales tax returns for sales into ARSSTC jurisdictions.

If a business conducts sales solely and are physically located within non-ARSSTC jurisdictions, they are not required to register with ARSSTC.

Recommendation:

Alaska-based businesses who meet the economic nexus threshold should register with ARSSTC and collect sales tax on remote sales into ARSSTC jurisdictions. The criteria threshold is based on their statewide, gross, remote sales.

Rationale:

The ARSSTC economic threshold is a statewide test and does not discriminate against place or origin. Any business that meets the threshold criteria and provides goods or services into ARSSTC participating jurisdictions. Remote sellers are required to file based on their statewide, gross annual sales, but by definition they are required to consider this based on being remote. Alaska businesses trigger the same test based on their remote sales.

Interpretation 2020.12 IN-TRANSIT FUNDS 6.12.2020

Issue:

For businesses that file taxes on the last few days of the month, ARSSTC does not receive the actual funds until days later. Release of funds to jurisdictions can be delayed until these funds clear or funds can be incorporated into the subsequent month's filing.

Discussion:

These funds are marked In Transit in MUNIRevs and are easily documented during the reconciliation but require a 3-4 days additional delay. It is reasonable to wait until funds clear to release funds to jurisdictions so records and funds match.

For filers who remit beyond the last day of the month, it is unreasonable to further delay reconciliation and remittance to jurisdictions. It is reasonable to have the funds from late filers in the subsequent month's filing.

Recommendation:

In keeping with best standards, all monthly funds should match the monthly sales tax filings (minus ARSSTC related fees) so it is reasonable to wait until funds clear completely to the ARSSTC depository account before distributing to the jurisdictions.

For late filers, the funds and filings will be incorporated into the subsequent month's filing.

Rationale:

In order to communicate clearly when funds will arrive, not further delay remittance, and deliver accurate and timely reports to the Commission, In Transit funds should be treated as part of the month they were filed for. Late filings, on the other hand, can be considered as part of the month during which they were filed, and remitted the following month based on that month's reconciliation.