

ARSSTC Policy Committee Agenda
May 18, 2021 * 2:00pm – 3:00pm

1. Updated Quarterly filing frequency revision proposal
2. Additional review of Interpretation 2021.03 – Treatment of digital goods / services
3. Revision to 2020.05 Sourcing of Goods
4. Protest Form / Discussion on unregistered sellers who are collecting member sales taxes
5. Walk-through of local vs remote service scenarios
6. Proposal for MLM companies to file through Commission portal
7. Open Discussion



Filing Frequency Change Guidelines

Seller provides a written request for changes to filing frequency. Changes will be granted to coincide with the start of quarter (January, April, June or December).

Quarterly Filing

A business may request quarterly filing if they meet the following criteria:

- Have less than \$10,000 in taxable sales across the state in the preceding 12 months **or**,
- Have fewer than 12 individual transactions across the state in the preceding 12 months.

Annual Filing

A business may request annual filing if they meet the following criteria:

- Have less than \$2,000 in taxable sales across the state in the preceding 12 months

If a business files late, they will then revert back to the monthly filing schedule. A business may request a quarterly filing again if they demonstrate timely for the preceding 6 months.

1. AMSTP staff receive the request for quarterly filing
2. AMSTP staff asks the business which communities they sell into
3. AMSTP staff forwards the request to the relevant communities for approval
4. Upon approval by all communities, AMSTP staff will inform business of determination
5. AMSTP will run annual audit to check that businesses remain within the criteria limits

TAXATION OF SOFTWARE DOWNLOADS, SPECIFIED DIGITAL PRODUCTS, STREAMING & OTHER ONLINE SERVICES

Issue:

Are the following transactions subject to sales tax as remote sales?

- Software downloads
- Specified digital products
- Access to Cloud-based software (SaaS)
- Streaming Services
- Subscription based access to the above
- Other online / digital services

Discussion:

Section 030(A) of the Uniform Code requires collection of sales tax on remote sales delivered into a member jurisdiction.

Section 270 of the Uniform Code defines “remote sales” as *sales of goods or services by a remote seller or marketplace facilitator.*

The question then to be answered is are the transactions listed above considered to be sales of goods or services subject to sales tax as a remote sale?”

Interpretation:

Software downloads & Specified digital products

Section 270 of the Uniform Code provides the following definition:

“Property” and “product” and “good” means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

Since software downloads and specified digital products are “perceptible to the senses” they are considered tangible personal property and subsequently are subject to sales tax as a remote sale when delivered into a member jurisdiction. In addition, the purchase of a software license is considered the purchase of intangible property.

The purchase of access to cloud-based software / SaaS is considered taxable in the same manner as software downloads.

Streaming Services / Online Services

Section 270 of the Uniform Code provides the following definition:

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise into a member jurisdiction including but not limited to:

- A. *Professional services;*

- B. *Services in which a sale of property or product may be involved, including property or products made to order;*
- C. *Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;*
- D. *The sale of transportation services;*
- E. *Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;*
- F. *Advertising, maintenance, recreation, amusement, and craftsman services.*

Based on the above definition of services, streaming services and other online services are considered a remote sale, subject to sales tax when delivered electronically into a member jurisdiction.

Subscription-based access to software downloads, digital products, SaaS, streaming & other online services

Each of these types of transactions are generally accessed either with payment of a one-time fee or through a subscription to allow for regular or continuous access to the product or service in question.

Section 270 of the Uniform Code defines “sale” as *any transfer of property or product or any provision of service(s) for consideration...*”

Based on the definition of sale, a subscription-based purchase of the product or service in question still meets the qualification of being a sale. The method or frequency of payment for access to the products or services in question does not change the overall nature of the transaction.

Point of Delivery / Sourcing

Under the definition of “Point of delivery” in Section of the Uniform Code, paragraph D states:

- D. *For products or services transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery of the sale to be the billing address of the buyer.*

By their nature, products or services that are transferred electronically can be accessed physically anywhere. However, in order to provide some standardization for sellers, if a product or service is purchased and transferred electronically, the buyer’s billing address is to be used as the point of delivery for determining the appropriate sales tax that is to be collected.

Summary:

Software downloads, specified digital products, SaaS, streaming services and other online services are subject to sales tax as a remote sale when delivered into an ARSSTC member jurisdiction. The broad definitions of “property” “product” & “good” as well as the broad definition of “services” allow these transactions to be considered in the definition of “remote sales”.

The definition of “point of delivery” specifies that the purchasers billing address is to be used as the point of delivery when the transaction is the purchase of goods or services delivered electronically.

Remote Sales Tax Refund Form

Notice: The ARSSTC Uniform Code Section 120 authorizes the ARSSTC to determine the correct tax rate for a transaction and allows for tax refund requests. Refund requests must be made within 180 days of the date of the transaction. Submit copies of all receipts related to this refund request.

Date of Sale: _____

Amount of Sale: _____

Buyer Name: _____

Delivery Address: _____

Buyer Phone: _____

Buyer Email: _____

Basis for Claim:

- I live outside of a taxing jurisdiction
- Seller did not accommodate the sales tax cap for my community
- I was charged the tax rate for a different community
- I am eligible for a tax exemption that was not honored (please submit proof of exemption along with receipt)
- Other: _____

I have contacted the seller to request a refund:

- Yes, but the seller could not accommodate my refund request
- No, (please list why not): _____

Seller/Business Name: _____

Seller Phone: _____

Seller Contact Name: _____

Seller Email: _____

I certify under penalty of perjury that I have not been reimbursed for incorrectly assessed sales tax by the above-mentioned business. I certify that this tax refund request (including any receipts and statements) has been examined by me and to the best of my knowledge and belief is true, correct, and complete.

Signature

Date Signed

Memo: Pursuing unregistered sellers that are collecting a member's sales tax

Issue: If a seller is found to be collecting a member jurisdiction's sales tax and the seller is not registered with either the member jurisdiction or the ARSSTC, who (member jurisdiction or ARSSTC) is responsible for pursuing registration and remittance?

Discussion

Typically, these situations come to the attention of the jurisdiction first usually due to a question / complaint by a local resident who was charged the sales tax. Or the seller will remit payment of sales tax to the jurisdiction without already being registered with the jurisdiction.

AMSTP staff believes that the jurisdiction should initiate contact with the business in question, acting in its role as the taxing authority. The taxing authority / member jurisdiction would be best suited to question the business on why it is collecting the local sales tax without being registered with the jurisdiction. Member jurisdictions have delegated the Commission authority to administer only remote seller registration and collection on the jurisdictions' behalf.

AMSTP staff have been given clear direction by the ARSSTC Board of Directors that matters relating to physical presence sellers are to be handled by the member jurisdiction. It is therefore proper for AMSTP staff to defer to the member jurisdiction to pursue registration on an unregistered seller who is not obviously a remote seller.

If, during the discussion with the business, the jurisdiction finds that the seller has no physical presence, then the jurisdiction should refer the business to the Commission website and/or AMSTP staff for registering as a remote seller and further follow-up. AMSTP would also be happy to help the member jurisdiction determine if the seller has physical presence, based on the information gathered by the member jurisdiction.

Summary

AMSTP staff believes the best protocol to address this scenario is for the member jurisdiction to initiate contact with an unregistered seller when the seller is collecting the member jurisdiction's sales tax. AMSTP is happy to be a resource for the member if the member is uncertain about who the seller should register with after they contact the seller.

This approach will best allow the Commission and AMSTP staff to not overstep the authority vested by the member jurisdiction(s).

Clinton,

I'm drafting our change to code regarding services to add point of delivery is where the service is received. I'm having trouble wrapping my head around this, because before this came up I thought we did tax at the point of "delivery" because we taxed where the provider did the service, not the location of the service provider's brick and mortar location (point of sale). But now that we are adding another level to where it's received (not necessarily where the service is done) some that were clear to me are now gray and those that were gray already are even more so now. LOL. As we discussed before I think a discussion with other taxing jurisdictions would be helpful to be sure we are on the same page when determining the grey ones.

Point of Delivery for service is now where the customer receives the service. Service work done from a company location outside the City provided to a person inside the City, whether electronic, remotely, by mail or provided onsite in the City would be taxed in the City. The reverse would also be true if the service provider located inside the City provides a service done from their office to or for a person outside the City whether electronically, remotely, by mail or at the site of its customer outside the city would not be taxable in the City (but may collect a different tax if the service is provided within a different taxing jurisdiction)

Here are a few I feel are grey or tricky one's I'm having trouble with. Some we've already talked about, but I left them on for discussion.

Specific examples:

Accountant- prepares federal returns at their office inside the City. They are electronically filed with IRS. Client may provide documentation electronically, by mail or drop off in person. Would a business inside City tax it if the return was for someone that resides outside the City? Would they use the billing address if it was different than the residence? Would it matter if the person picked up a hard copy and/or paid at the office, would it then be received in the City?

- *Service is first used by client when / where the client receives the benefit or result of the service.*
- *Delivering documents at the outset of the provision of the services does not impact the end result of the service.*
- *If client receives the benefit / result of the service i.e. obtains copy of the return at the accountant's office, the point of delivery is the accountant's office.*
- *If return is mailed to an address as directed by the client, the point of delivery is the mailing address.*
 - *Mailing address is where the benefit / result of the service was first received by client.*
- *If return is sent to client electronically, the point of delivery would be the client's address as known to the accountant, more than likely the address on the return that was prepared.*
 - *Typically mailing address is the same as billing address, but there may be exceptions.*

Advertising- Radio, TV, Newspaper- Before we taxed where the "ink hit the paper" or ad was recorded. Now it will be where the person receiving the advertising is located (or billed), correct? Again, would it matter if the business is located in the City and the customer physically went in to place of business make the sale vs if it was made by phone, email, solicitation? Banner/sign advertising or sponsors of events at our sports center were taxed, because the banner was hung in the City or event was located here. If the Ad is exclusively marketed in the City, such as the banner would that be received in the City, or at their business location or mailing address?

Appraiser- Appraiser outside the City is picked to appraise a property located inside the City. They are chosen by a lender, the service is paid for by the purchaser at closing. Where is the service received???? The location the appraisal is sent to (bank), the subject property address, where the purchaser resides or address where the transaction is closed? "the first use of service" definition is throwing me.

- *Service is first used by client when / where the client receives the benefit or result of the service, in this case the appraisal report.*
- *The client in this case is the bank / lender so the point of delivery is where the lender would first receive the appraisal report – the bank or lending office’s location.*
- *Appraiser should be able to use physical address of lending office depending on if it is known to appraiser that is where the report is truly being received by the client.*

Taxi, Towing and courier or freight services taxed at pick up or drop off? First use of services would indicate pick up, but in the case of the courier a client may be having something brought to them or sent out from them so should it would then be the location of the client requesting the service? What if that location is neither the pick up or drop off location, would that still be the clients location?

In the case of a tow, I may break down at one location, have car towed to a 2nd location and I live in a 3rd location, would it matter if the person is present, or if they request the tow by phone or an app?

Law offices. If clients meet at the office, service is provided at that location, but most work is done for a client where they are not present. Would that be taxed to the client’s address location? Would it all?

- *I’m finding that if the attorney represents the client in court, the location of the court is where the client is receiving the benefit of the legal services.*
- *If the attorney is providing a service such as a will that is actually sent to the client, the situation can be treated similar to accounting services.*

Architect, Survey Co, Real Estate Agents- All would be taxed at the location of the property they are doing the work for or at or is there an scenario that would make that not the case?

- *Survey – appears that the standard is client receives the benefit of the service at the property location being surveyed.*
- *Architect / engineering – similar to accounting*
 - *If result of services is received by client at office, then point of delivery is the office,*
 - *If not received by client at office, then use customer’s address,*
 - *If there are multiple services being billed, not all of which were received at the office, the client’s address should be used.*

Photography? Service & product- If hired to take pictures at a wedding first use of services is at the location of the wedding. If the photos are received electronically or by mail elsewhere they would be taxed at the delivery address or billing address. If it’s a package price for both is it taxed at the wedding location or the photo delivery location?

How about family or senior portraits? The photo shoot fee may involve multiple locations in different taxing jurisdictions. If it’s in multi locations vs one would it be deemed “can’t be determined” and they use the purchasers billing address as the location of the service??

To: ARSSTC Board

From: Clinton Singletary, Statewide Municipal Sales Tax Director

Re: Proposal to collect physical presence revenues thru MUNIREvs portal

Background

A number of remote sellers remitting through the ARSSTC MUNIREvs portal also have physical presence in some member jurisdictions. Currently, these businesses file returns directly with each member jurisdiction where they have physical presence to report both their physical sales and their remote sales into that jurisdiction. Then, they also file a return with the Commission for remote sales into all other member jurisdictions.

This filing requirement frequently receives negative responses from affected sellers, primarily due to apparent difficulties in pulling the pertinent sales info from their system and reporting in the correct manner. Reporting all their Alaska sales through the Commission portal was their desired approach.

AMSTP staff approached MUNIREvs for a possible solution, recognizing that the sales reported directly to member jurisdictions are not remote sales, and should not be subject to the same level of fees that are charged on remote revenues. MUNIREvs has presented an option that would allow for a 1% MUNIREvs fee to be charged on those physical presence revenues instead of the 12% MUNIREvs rate for remote revenues. AML would also adjust its rate for the physical presence revenues to .25%. Cost for the upgrade is quoted at \$13,500 and is included in the FY22 budget proposal. MUNIREvs estimates a total 9 weeks to complete the upgrade once approved.

There are a wide range of sellers that could benefit from this solution, but we are only wanting to grant this option to a specific type of seller, multi-level marketing (MLM) companies. It would not be in member's best interests to allow companies such as Walmart or Target with significant physical presence revenues to participate, even with the reduced rate to members.

Proposal / Process

I am looking to the Board for approval to present this proposal to Commission members as follows:

- Email to members, outlining the scope of proposal including the adjusted rate and limited application to MLM companies,
- Ask members to respond with their desired level of participation:
 - No participation
 - Limited participation - member wants to approve each MLM business that submits a request.
 - Full participation – member does not need to approve each request, provided the request is from an MLM company.
- We'll provide a list of MLM companies that are currently reporting through the Commission so members will have a reference for the impacted revenues. Currently there are 20 MLM companies registered and reporting some of their sales through the Commission.

If the overall response from members is negative, i.e. not interested in participating, we won't pursue the proposal any further. In order to be most beneficial to MLM companies, we are looking for a strong majority of members to be open to at least limited participation with a solid number of full participation members.

Addendum for Policy Committee

The ARSSTC Board asked that this topic be sent to the Policy Committee for further discussion. There were concerns about the complication factor of this proposal for both sellers and members.

Specific discussion points for Policy Committee:

- Review of current MLM companies registered with ARSSTC.
- Review possible impacts from the jurisdiction perspective.
 - Impacts to revenues?
 - Beneficial to jurisdiction in terms of staff resources?
- Discuss impact on independent sales agents located in the member jurisdiction.
- Would this proposal violate the “remote-seller only” role of the Commission?

Current list of MLM Companies reporting through the ARSSTC:

Crunchi, LLC
Plexus Worldwide LLC
Xyngular Corporation
DoTerra International LLC
H2OatHome
Ruby Ribbon Inc
SGII Inc.
Beachbody, LLC
Monat Global Corp
Partylite Inc
AdvoCare International, LLC
Younique LLC
NORWEX USA INC
Pruvit Ventures, Inc.
Morinda USA, Inc.
Nu Skin Enterprises United States Inc
Thirty-One Gifts LLC
Fragrant Jewels LLC
The Body Shop At Home US LLC
Rodan & Fields LLC