ARSSTC Policy Committee Agenda
June 15, 2021 * 2:00pm – 3:00pm

1. Services point of delivery discussion
2. Proposal for MLM companies to file through Commission portal
3. Interpretation 2021-04: Sales Price
4. Revision of Interpretation 2020-10: Entity-Based Exemption Certificates
5. Open Discussion

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?

- *Digital / online – sourced to address of customer.*
- *TV – sourced to address of customer.*
    - *this type of advertising does usually have a target audience and is typically run in a specific market. However, these ads may reach across a number of taxing jurisdictions, not just one specific jurisdiction.*
- *Radio – sourced to address of customer.*
    - *Similar logic to TV*

- *Print media ads (newspaper / magazine etc) – sourced to address of customer*
- *Banner, sign or other fixed location advertising*

This scenario crosses into the question of whether a transaction is a good or service. sourced to location of advertising since the location of the ad is where the buyer receives

Even with the good vs service question though, these transactions have a specific location associated with the end product / service. As a result, if the seller places or installs the physical advertising in a specific location, that is where the buyer is taking receipt. This is essentially treating the transaction as a good. If the transaction is the sale of a good, then it would be taxable at the seller's place of business if the customer paid for the good at the place of business.

For services, the code does not consider the seller's place of business to be the point of delivery if the buyer pays the service, but does not receive the service at the place of business.

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?

- *Transportation based services generally focus more on the point of pickup, but one example I found for armored vehicle services placed POD at business/purchaser's location.*
- *Towing services apparently could go either with pickup location as making first use, or delivery location as making first use of services.*

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??

- *Taxation of photography services places the emphasis on the end result of the services, the final photos.*
- *Photography therefore should be treated more as the delivery of goods:*
  - *If photos are physically sent to the purchaser, the sale should be sourced to the mailing address.*
  - *If photos are delivered electronically or accessed via cloud, the sale should be sourced to buyers address, more than likely billing address.*
- *This scenario touches on the topic of whether or not a transaction is a service or a good….*

From:	Karl Kaufman
To:	Clinton Singletary; Matt Mead
Cc:	Nils Andreassen; Kara Johnson
Subject:	Re: Collection of physical presence revenues thru MUNIRevs
Date:	Thursday, May 20, 2021 4:33:13 PM
Attachments:	image001[72].png

Clinton:

You asked us to respond to two questions raised by the Board & Policy Committee:

1. Can the Commission legally collect physical presence revenues from local sellers?

Clinton—yes, the opt-in guidance is still correct. I do think the commission and the municipality could achieve the same goal through an intergovernmental agreement. However, I don't think the agreement would be able to change the laws that apply to the local sellers. For example, the Commission could collect sales tax from local sellers, but the local sales tax code would be the tax that is enforced. The opt-in provision (or an opt-in provision in the uniform code), in contrast, would allow the commission to apply the uniform code provision to local sellers. That would greatly simplify administration for the commission.

2. Is this proposal legally defensible in that it would only allow a specific type of seller (MLM companies) to participate?

I don't think the commerce clause discrimination test is implicated here. Rather, we would need to look under an equal protection analysis. I think we could defend the disparate treatment if there was a rational relationship to a legitimate legislative purpose—the equal protection test that generally applies to taxation. If the commission wants to move forward but also wants to differentiate between some remote sellers with physical presence, I'd suggest we look into this in depth.

Sincerely,

Karl

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From: Clinton Singletary <clinton@akml.org>
Date: Thursday, May 20, 2021 at 1:45 PM
To: Karl Kaufman <karlk@lbblawyers.com>, Matt Mead <mattm@lbblawyers.com>
Cc: Nils Andreassen <nils@akml.org>, Kara Johnson <kara@akml.org>

Subject: Collection of physical presence revenues thru MUNIRevs

Hi Karl & Matt,

This was a topic at our last ARSSTC Board meeting and the Policy Committee this week. I've attached a memo that I presented to the ARSSTC Board and the Policy Committee outlining the proposal in more detail.

The Board & Policy Committee raised the following questions:

1. Can the Commission legally collect physical presence revenues from local sellers?
2. Is this proposal legally defensible in that it would only allow a specific type of seller (MLM companies) to participate?

After the Policy Committee meeting, I discovered the attached memo that you and Matt sent AML last year that appears to address the first question. Your memo states that members would need to include an "opt-in" election into their local code to treat their local sellers as remote sellers under the Uniform Code provisions. I assume that guidance is still valid, but can you confirm? Could it be addressed through an updated Intergovernmental Agreement instead?

For the second question, would it be discriminatory against both a number of Alaskan businesses and other remote sellers who have limited physical presence in the state if they were not allowed to participate? I would assume that municipalities can still treat their local sellers how they want i.e. worse than remote sellers. But it seems like different treatment amongst the same class of sellers (remote sellers who also have physical presence) could be problematic.

Thanks for your input!

Clinton Singletary
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ALASKA REMOTE SELLER SALES TAX COMMISSION

MEMORANDUM

Client: Alaska Municipal League

Date: April 24, 2020

From: Matt Mead and Karl A. Kaufman

Re: Response to MUNIRevs Proposal

AML has asked us to review MUNIRevs' proposal to allow additional users of the online sales tax filing and payment portal. MUNIRevs is not specific on the extent of the proposal. It appears there are three parts:

- MUNIRevs first proposes to allow businesses with a physical presence in a member jurisdiction (a jurisdiction that has adopted the Remote Seller Sales Tax Code) to opt-in to filing their municipal sales tax returns through MUNIRevs portal.
- MUNIRevs next proposes to allow non-member jurisdictions to use the Commission portal to collect sales tax from local sellers.
- Finally, MUNIRevs appears to propose to allow remote sellers selling into non-member jurisdictions to file through the MUNIRevs portal.

This overview attempts to flesh out some of the potential issues with MUNIRevs' proposal and flag issues for consideration and questions for follow-up.

1. Collection from local businesses in member jurisdictions

MUNIRevs first proposes to allow businesses with a physical presence in a member jurisdiction—a jurisdiction that has adopted the Remote Seller Sales Tax Code—to opt-in to filing their municipal sales tax returns through MUNIRevs. See the bullet points under "Technical Functionality for Jurisdictions."

In our view, this is the most viable option and can be accomplished by providing local sellers an election to treat local sales as remote sales. A member jurisdiction would need to adopt an "opt-in" election in their local sales tax code. By opting-in, a local seller would also agree that the provisions of the remote seller sales tax code would apply to its sales (such as the penalty and collection provisions). This shouldn't impose a significant burden on the Commission, as the local sales would be treated the same as remote sales.

2. Collection from local businesses in non-member jurisdictions

MUNIRevs next proposes to "turn on" the button for collection and remittance of sales taxes for all Alaska municipalities. MUNIRevs would allow non-member jurisdictions to use the Commission portal to collect sales tax from local sellers. Sellers physically located in non-member jurisdictions would then be able to file and pay their local sales taxes through the online portal. See the bullet points under "Filing Process for Taxpayers."

We see this proposal as problematic for a number of reasons. First, it is probably not administratively feasible for the Commission to implement many different non-uniform sales tax codes. Some of the burden of set-up and compliance will be borne by the Commission staff, who will "verify the rates and exemptions for each of the remaining jurisdictions in the system." This raises concerns about the Commission's role and how non-members would potentially receive the benefits without participating in (and funding) AML and the Commission.

Second, the Commission would probably not have the legal authority to enforce non-member sales tax codes. The process of becoming a Commission member involves delegation of a jurisdiction's taxing authority. Non-members have not delegated that authority to the Commission.

Finally, it is unlikely that the Commission members would approve extending the benefit of online filing and collection to jurisdictions that have not supported development of the Commission or its software. MUNIRevs' suggestion that remote sellers can voluntarily remit for cities that have not adopted the Code implicates concerns about uniformity and fairness to Commission members. This was discussed at one of the AML/ARSSTC meetings. Members definitively rejected extending the benefit of online filing and collection to non-Commission members because non-member jurisdictions have not contributed resources to the development of the Commission, the uniform act, or the software.

3. Collection from remote sellers selling into non-member jurisdictions.

Finally, it appears that MUNIRevs proposes to allow non-member jurisdictions to collect from remote sellers selling into non-member jurisdictions. See the bullet points under "Benefits to Non-Member Jurisdictions." Similar to above, if this proposal was approved, the Commission would need to administer many different sales taxes, the Commission would not have the legal authority to enforce non-member sales tax codes, and it is unlikely that Commission members would approve of allowing non-members to receive the benefits without supporting the Commission's start-up and operating costs.

Conclusion

We believe that the proposal to allow local businesses within member jurisdictions to report and remit using MUNIRevs online portal would benefit the Commission, the member jurisdiction, and the local seller. However, allowing non-member jurisdictions to use the online reporting software raises a number of administrative and legal difficulties and may ultimately be rejected by Commission members. Instead of extending the benefits to non-member jurisdictions, we recommend the Commission develop a streamlined process (and establish rates) for non-members to apply for membership with the Commission.

ALASKA REMOTE SELLER SALES TAX COMMISSION

Interpretation 2021.04

SALES PRICE SUBJECT TO SALES TAX

Issue:

What types of charges make up the "sales price" of a remote sale?

Applicable Uniform Code Sections:

Section 030(B) of the Uniform Code states that the applicable sales tax "shall be added to the sales price…".

Section 270 of the Uniform Code defines "sales price" or "purchase price" as:
The total amount of consideration, including cash, credit, property, products, and services, for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- *A. The seller's cost of the property or product sold;*
- *B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;*
- *C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;*
- *D. Delivery charges;*
- *E. Installation charges; and*
- *F. Credit for any trade-in, as determined by state law.*

Interpretation:

In general, the sales price of a transaction is the amount of consideration exchanged. Following are some common sales price related topics and how they are to be treated based on the Uniform Code.

Seller costs – as stated in the definition of "sales price", seller costs may not be deducted from the sales price.

Discounts – a discount given by the seller is considered a reduction to the sales price. Sales tax should be collected on the reduced sales price after discount.

Taxes – Some taxes such as excise taxes may be imposed on seller of certain goods. These sellers typically pass on the cost of these taxes to the end consumer, either as a separately identified charge or by adding it to the product's overall cost. These types of taxes that are imposed on the seller and passed on to the end consumer may not be deducted from the sales price of the product. Sales tax should be collected on the full amount charged to the buyer.

Coupons / Rebates – there are generally two types of coupons/rebates: 1) Manufacturer's coupons and 2) in-store coupons

- Manufacturer's coupon / rebate – These are typically reimbursements offered to the seller by the manufacturer or other 3rd party. These reimbursements simply act as an additional form of payment to the seller, allowing the buyer to pay a reduced amount.
- In-store coupon / rebate – These act effectively as a discount, where the seller is reducing the sales price when the coupon is presented. Sales tax should be collected on the reduced sales price after discount

Interpretation 2021.04

Inclusion of sales tax – according to Section 030(B) of the Uniform Code, the applicable sales tax must be added to the sales price. This means that a seller cannot include sales tax in the sales price of the transaction.

Trade-ins – A trade-in acts as an additional form of payment / consideration where the buyer provides the seller with a good having an agreed upon value. The sales price of the product being purchased does not change. The buyer is simply providing two forms of payment. Sales tax should be collected on the full sales price of the product.

Gift cards / gift certificates – purchases of gift cards or gift certificates are not considered to be a sale subject to sales tax. The "buyer" of the gift card / certificate is simply changing currency from one form into another. The sales tax liability is not created until the gift card / certificate is redeemed.

Shipping / delivery Charges – shipping and delivery charges associated with the sale of products or goods are generally considered part of the sales price, subject to sales tax. For more detailed discussion on shipping & delivery charges, please see Interpretation 2021.01.

Summary:

The Uniform Code clearly requires sales tax to be added to the sales price of the transaction. The Code does not allow for inclusion of sales tax in the sales price.

In addition, the Uniform Code outlines that the sales price subject to sales tax is the full amount paid by the buyer, regardless of the method of payment.

2020-10 INTERPRETATION

ENTITY-BASED & PRODUCT-BASED EXEMPTION CERTIFICATES

Issue:
What documentation should be obtained by remote sellers entity-based exemptions (senior citizen, non-profit, government) and product-based exemptions?

Discussion:
The Uniform Code Section 090(I) requires that sellers obtain proper documentation for tax-exempt sales.

> "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."

It is important to note that not all sales tax exemptions require a buyer to present an exemption certificate. Typically, exemption certificates are required for certain entity-based exemptions such as nonprofit, government or senior citizens. Sales for resale are considered product-based exemptions and are typically based on a resale certificate issued to the buyer.

Sales tax exemption certificates for both entity-based and product-based exemptions are typically issued by the member jurisdiction where the exempt entity is located. However, not all member jurisdictions have the capacity to issue exemption certificates for their entity-based or product-based exemptions.

A list of our current member jurisdictions with the exemption certificates that they issue is available on our website www.arsstc.org. If there is an exemption category for which a member jurisdiction does not issue an exemption certificate, the remote seller is relieved of the responsibility of obtaining a certificate to exempt a transaction. The remote seller may still require the customer to upload some evidence of exemption such as proof of age for a senior citizen exemption.

The remote seller should simply verify the reason the customer is claiming exemption, verify the exemption category is allowed in the member jurisdiction and report the exemption accordingly.

Recommendation:
Member jurisdictions are responsible for issuing exemption certificates for the applicable exemption categories in their sales tax code.