

ARSSTC Policy Committee Agenda  
July 20, 2021 \* 2:00pm – 3:00pm

1. Update on proposal for MLM companies to file through Commission portal
2. New Interpretation 2021-04: Sales Price
3. Revision of Interpretation 2020-10: Entity-Based Exemption Certificates
4. Volunteer from Policy Committee to update Board on PC discussions
5. Open Discussion

**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\[721\].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

<b>LANDYE BENNETT</b>	<b>Karl A. Kaufman   Attorney</b>
<b>BLUMSTEIN LLP</b>	<a href="mailto:karlk@lbblawyers.com">karlk@lbblawyers.com</a>
<b>A T T O R N E Y S</b>	Suite 1100 907.276.5152 (w) 701 West 8th Avenue 907.868.9223 (d) Anchorage, Alaska 99501 907.276.8433 (f)

---

**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  
Statewide Municipal Sales Tax Director  
Alaska Remote Seller Sales Tax Commission  
Direct (907) 790-5307 or Cell (907)635-4453  
[www.arsstc.org](http://www.arsstc.org)





## 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 sellers 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 3<sup>rd</sup> party. These reimbursements simply act as an additional form of payment to the seller, allowing the consumer 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 product 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 when granting 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](http://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.