

ARSSTC Policy Committee Agenda
May 17, 2022 * 2:00pm – 3:00pm

1. Interpretation 2022.01 – Drop shipping
 - a. Plus resale scenario discussion
2. Tax cap uniformity proposal follow-up
3. Big box remote sellers with physical presence in a jurisdiction
4. Open Discussion



Interpretation 2022.01

Transactions involving Drop-Shipments into ARSSTC Member Jurisdictions

Issue:

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

Background:

The typical drop-shipment involves three parties:

1. The customer
2. Seller A
3. Seller B aka “the shipper/supplier”

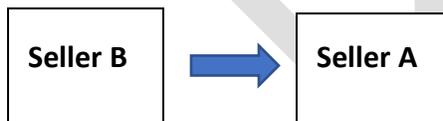
Very simply, the customer makes a purchase from the seller. The seller then purchases from the shipper/supplier and directs the shipper/supplier to ship the good(s) directly to the customer. This in essence creates two separate transactions as outlined below:

Transaction #1



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

Transaction #2



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

Guidance for Transaction #1

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



Interpretation 2022.01

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

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

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

Transaction #1 Summary

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

Guidance for Transaction #2

Transaction #2 is more complicated as it brings in the question of resale exemption.

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

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

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

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



Interpretation 2022.01

- If Seller A is not located in a local Alaskan jurisdiction with a sales tax, it will not be able to obtain a resale certificate from its local jurisdiction.
- **ARSSTC Remote Reseller Sales Tax Exemption Certificate** issued to Seller A by the ARSSTC.
 - [ARSSTC Remote Reseller Certificate application](#)
 - An ARSSTC Remote Reseller exemption certificate may only be issued to Seller A if:
 - Seller A is not located in an Alaskan taxing jurisdiction and,
 - Seller A conducts remote sales across AK.
 - If Seller A conducts remote sales across AK, it will need to register with the ARSSTC regardless of economic nexus threshold if it desires to obtain the ARSSTC Remote Reseller Exemption certificate.
 - If Seller A does not conduct remote sales across AK, it will not be entitled to obtain the ARSSTC Remote Reseller Exemption certificate.
- **Uniform Sales & Use Tax Resale Certificate – Multijurisdiction** (from the Multistate Tax Commission) presented by Seller A.
 - Claims for resale exemption by Seller using the Uniform Sales & Use Tax Resale Certificate will be accepted for audit purposes by ARSSTC as appropriate documentation.

Transaction #2 Summary

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

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

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

Multiple forms of resale exemption documentation may be accepted by Seller B, including the ARSSTC Remote Reseller Exemption Certificate, the Uniform Sales & Use Tax Resale Certification from the MTC or a resale certificate issued to Seller A by the local Alaskan taxing authority.

Resale Scenarios

Drop shipping, WA delivery, and local AK businesses

#1 – Alaskan business in local taxing jurisdiction being charged WA sales tax based on WA point of delivery

- Business would fill out the MTC cert with their local resale certificate information.

#2 – Alaskan business in non-taxing jurisdiction being charged WA sales tax based on WA point of delivery.

- If Alaskan business is remote seller, i.e. conducts remote sales across AK, the business should register with ARSSTC regardless of economic nexus threshold.
 - Business should apply for ARSSTC remote reseller certificate, and complete MTC form with the ARSSTC reseller information.
- If Alaskan business does not conduct remote sales across AK, the business does not qualify for the remote reseller certificate and will not be able to use the MTC resale certificate

#3 – Alaskan business in local taxing jurisdiction being charged their local sales tax by remote seller.

- Business should provide their local resale certificate to the remote seller.

#4 – Alaskan business outside local taxing jurisdiction, being charged their local sales tax by remote seller based on point of delivery inside city.

- Business is not entitled to local exemption certificate due to not conducting business in local taxing jurisdiction.
- If business is remote seller, i.e. conducts remote sales across AK, the business should register with ARSSTC regardless of economic nexus threshold.
 - Business should apply for ARSSTC remote reseller certificate, and complete MTC form with the ARSSTC reseller information.
- If business does not conduct remote sales across AK, the business does not qualify for the remote reseller certificate and will not be able to use the MTC resale certificate.

#5 - non-Alaskan business being charged AK sales tax by supplier / drop-shipper due to point of delivery in AK taxing jurisdiction.

- Business should register with the ARSSTC as remote seller regardless of economic nexus threshold.
 - Business should apply for ARSSTC remote reseller certificate, and complete MTC form with the ARSSTC reseller information.

Proposed Language for MTC Resale Certificate

Alaska / ARSSTC: This certificate is valid as a resale certificate only if it contains the purchaser's name, address, signature and either the purchaser's ARSSTC Remote Reseller Certificate of Exemption number or the purchaser's resale certificate number issued by the local taxing jurisdiction.

The purchaser's claim for exemption may be verified by calling the ARSSTC at 907-790-5300.



To: ARSSTC Policy Committee

From: Clinton Singletary, Statewide Municipal Sales Tax Director

Date: April 19, 2022

Re: Tax Cap uniformity

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

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

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

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

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

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

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

Questions for the Policy Committee to consider:

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

Notes from 4/19/22 PC

- Discussion around how possible local code change would have to happen, i.e. Assembly / Council action vs vote of citizens.
 - AK law requires voter approval for an increase in tax rate
 - Can also depend on how original tax code or exemption was adopted
- Discussion around best next steps, possibly bring to Board for greenlighting a working group.



Common Examples of Language

Definition of Single Item:

An item sold in a single sale consisting of integrated and interdependent component parts affixed or fitted to one another in such a manner as to produce a functional whole. Optional accessories, including goods, services, and contracts for services, if essential for the operation of the item, shall be considered part of the functional whole.

Definition of Single Service – An interrelated and interdependent function necessary to perform a specified action. If a single service is performed over a period exceeding one month, the selling price must be apportioned to a monthly or invoice basis, whichever is more frequent, proportionate to the service performed.

Definition of Single Transaction – cannot find example of “single transaction” definition, only examples of type of transactions that require special treatment-these :

- Services rendered over timeframe greater than one month
- Short term rentals
- Capital Leases
- Long-term vehicle leases
- Other leases
- Installment payment transactions
- Products sold w/ Services
- Separate service criteria

Single Unit Sale

1. Any retail merchandise sale where the selling price is totaled on one invoice or any sales slip, although this exemption does not apply if any portion of the invoice or sales slip refers to more than one business day;
2. Any sale of services sold by an individual unit price;



To: ARSSTC Policy Committee

From: Clinton Singletary, Statewide Municipal Sales Tax Director

Date: May 17, 2022

Re: Big box stores local vs remote filings

This topic goes back to the idea of allowing certain remote sellers having a physical presence in member jurisdictions to report both their physical presence and remote sales through the MUNIRevs ARSSTC portal.

As you'll recall, initial discussions on this topic focused on allowing this for MLM (multi-level marketing) companies only. MUNIRevs could be programmed to allow for a reduced fee on the revenues reported by these physical presence / remote sellers.

The MLM-based discussion has gone by the wayside to a degree due to a lack of interest and inherent difficulties in implementing. Since our last discussion on this topic, a new point of difficulty has been raised by certain businesses.

Our contacts at Avalara that are involved in preparing sales tax returns for clients having both physical presence sales and remote sales across AK have expressed concerns about the filing requirements outlined in Section 050(B) & 050(C) of the Uniform Code. Specifically, the requirements for the business to report certain remote i.e. online sales separately from other remote / online sales.

Avalara's concern centers on having to separate out sales reports from various sources to report different groups of sales to either the local member jurisdiction directly or to the Commission. Avalara questioned this as being prone to inaccuracies and introducing an extra level of burden that isn't experienced in other states.

I expressed some level of skepticism about the difficulties they outlined. The filing requirement outlined under 050(C) is not a new requirement for these businesses, even if the businesses have not been following that rule. Prior to *Wayfair*, a business with a physical location in a local jurisdiction should've been taxing its online sales into that jurisdiction and reporting with that jurisdiction. The separation of sales that are now a point of concern are technically not a new requirement. The only new requirement is the taxation of remote sales into jurisdictions where the business does not have a physical presence.

With that said, Avalara has asked us to consider allowing some form of alternative approach. In the meantime, it will be preparing a letter to the Board outlining the difficulties it is facing with its clients. When looking at this issue to try and find a compromise or alternative approach, only one possible option comes to mind.



That option would be to allow a business to report all of its online sales with the Commission, even for jurisdictions where the business has a physical presence. The business would still report its brick & mortar sales directly to the jurisdiction.

This was communicated to Avalara as a possible solution that they believed would be helpful to their clients. Since Avalara is preparing a letter for the ARSSTC Board, it would be beneficial for the Policy Committee to weigh in on the question as well and provide its perspective to the Board.

AMSTP staff is requesting that the Policy Committee consider these points and draft an opinion to the Board on the topic.