

ARSSTC Policy Committee Agenda  
July 19, 2022 \* 2:00pm – 3:00pm

1. Physical presence definition / discussion
2. Draft Voluntary Disclosure agreement
3. Sourcing of Goods (Interpretation 2020.05) Revision Discussion
4. Open Discussion



**To: ARSSTC Policy Committee**

**From: Clinton Singletary, Statewide Municipal Sales Tax Director**

**Date: July 19, 2022**

**Re: Definition of physical presence**

Recently AMSTP staff encountered a situation where a company with stores across Alaska also made deliveries with company vehicles and staff. The issue was that the company believed it only had physical presence in the jurisdictions where the stores were located. However, AMSTP staff and one of the jurisdictions involved believed that physical presence was also created by the company delivery vehicles operating in other jurisdictions where there were no stores.

The Uniform Code definition of “physical presence” states the following:

*“Physical presence” for purposes of section .050 means a seller who establishes any one or more of the following within a member jurisdiction:*

- 1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the member jurisdiction;*
- 2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the member jurisdiction;*
- 3. Provides services or holds inventory within the boundaries of the member jurisdiction;*
- 4. Rents or Leases property located within the boundaries of the member jurisdiction.*

*A seller that establishes a physical presence within the local member jurisdiction in any calendar year will be deemed to have a physical presence within the member jurisdiction for the following calendar year.*

As you can see in the definition, “making deliveries” is not explicitly listed.

Questions for the Policy Committee

- Does delivery with company vehicles truly create physical presence?
- If so, what section of the physical presence definition addresses that?
- Should the definition be expanded to add clarification?
- Is an Interpretation needed on this topic?
  - No current Interpretation addresses physical presence in significant detail.



**To: ARSSTC Policy Committee**

**From: Clinton Singletary, Statewide Municipal Sales Tax Director**

**Date: July 19, 2022**

**Re: Voluntary Disclosure Agreement Parameters**

General Eligibility

- Remote seller has never registered with the Commission or reported taxes to the Commission;
- Remote seller has never been contacted by the Commission for enforcement purposes (i.e. registration or reporting compliance notifications);
- Not engaged in evasion or misrepresentation in reporting tax liabilities.
- Back taxes in question were not actually collected by the remote seller.

Lookback Period

- The lookback period under VDA programs are generally 36 months to 48 months.
- AMSTP recommend 36 months in line with 3-year period for assessments & amendments under the Uniform Code.

Penalties / Interest

- VDAs typically allow for some waiver of penalties, but not interest.
- Two late payment penalty waiver options:
  - Option 1 – Waive 50% of applicable late payment penalties
  - Option 2 – Waive 100% of applicable late payment penalties
- AMSTP staff recommends waiving the late filing fee per period.
- Interest would not be subject to waiver under a VDA.

Important to note that collected but unremitted sales taxes would be considered delinquent, not subject to a lookback period or penalty waiver.

General Process

- Business or representative would complete application requiring the following:
  - Business Name
  - Date economic nexus was established
  - Declaration by business if taxes were collected or not
  - Business contact information
  - 3<sup>rd</sup> party representative contact information along with POA or letter from business granting authorization to 3<sup>rd</sup> party.
- Once application is submitted, ARSSTC staff would review and either deny or approve participation in VDA program.
  - If approved, staff will send VDA agreement to business or 3<sup>rd</sup> party representative.



- Agreement must be signed and returned within 30 days.
- Once signed agreement is received, AMSTP will provide instructions on how to:
  - Register with the Commission
  - File necessary returns with the Commission
- Business will have 30 days (rounded to next end of month) to submit necessary filings and remit payment in full.
  - Failure to file and remit in full by due date will lead to accrual of late filing fees and late payment penalties.



## Voluntary Disclosure Agreement Number:

Voluntary Disclosure Period:        through

THIS AGREEMENT is by and between the Alaska Remote Seller Sales Tax Commission (the “Commission”) and the above-referenced Taxpayer (the “Taxpayer”).

### Recitals

The Taxpayer *insert detailed description of nexus, business activities, etc.*

### Agreement

1. The Taxpayer specifically acknowledges that the Commission’s assent to this agreement is based on the Taxpayer’s representation that it has not:
  - a) previously registered with the Commission, nor
  - b) been contacted by the Commission regarding its registration or reporting requirements prior to its voluntary disclosure application, nor
  - c) wilfully attempted to evade or misrepresent its tax liability.
2. The Taxpayer shall register with the Commission as a remote seller no later than **30 days from agreement date**. The Taxpayer will complete an Alaska Remote Seller Business Registration online at [www.arsstc.munirevs.com](http://www.arsstc.munirevs.com).
3. Beginning with the date of registration, the Taxpayer will endeavor in good faith to comply with all provisions of the Alaska Uniform Remote Seller Sales Tax Code (Uniform Code).
4. The Commission will waive the Taxpayer’s tax liability for retail sales taxes for remote sales into Alaska occurring prior to **beginning voluntary disclosure period**. This paragraph does not apply to retail sales and use taxes which were collected and not remitted to the Commission.

## Voluntary Disclosure Agreement XXXX-XXX

5. The Taxpayer shall, no later than *30 days from agreement date*, file via the Commission's online filing portal at [www.arsstc.munirevs.com](http://www.arsstc.munirevs.com) all applicable sales tax returns for the period of *beginning voluntary disclosure period* through *ending voluntary disclosure period*. If additional time is needed, the Taxpayer must submit a written request for an extension prior to the due date. The Commission shall have the sole discretion to grant or deny an extension.
  6. Upon the Commission's request, the Taxpayer must provide applicable exemption certificates or other appropriate evidence to support any deductions, exemptions, or credits that are claimed.
  7. The following penalties will be waived for the voluntary disclosure period in accordance with Uniform Code Section 170:
    - a) Twenty-five dollar (\$25) per month late filing fee;
    - b) Five percent (5%) late payment penalty (provided retail sales or use taxes were not collected by the Taxpayer)\*;
- \*If retail sales taxes were collected and not remitted by the Taxpayer, the Commission considers the funds to be held in trust and the statute of limitations will not apply. The five percent late payment penalty will be applied to the retail sales taxes collected up to the maximum twenty percent allowed under Section 170(C).
8. Interest will be assessed on all tax amounts due.
  9. The Commission's filing portal will calculate the tax, interest, and, if applicable, any penalty owing for the voluntary disclosure period, and present the Taxpayer of the total amount due in a tax assessment. The Taxpayer will be required to submit payment in full via electronic means at the time of filing.
  10. The Taxpayer must pay the assessment by the due date outlined by the Commission, or late payment penalties and late filing fees will be imposed.
  11. The Taxpayer will begin filing the Commission's Remote Seller Sales Tax returns in accordance with the Commission's reporting instructions, beginning with the *month following ending voluntary disclosure period* return which is due on or before *monthly return due date*.
  12. The Commission will maintain the confidentiality of this agreement as provided for in Section 220 of the Uniform Code.
  13. If the Taxpayer materially violates any provision of this agreement or if the facts provided by the Taxpayer are materially different from the facts subsequently established by the Commission, this agreement is null and void and the Commission may take any steps necessary to ensure the Taxpayer's compliance with the Uniform Code.

**Voluntary Disclosure Agreement XXXX-XXX**

Necessary steps may include, but are not limited to, the assessment of tax, interest, and any applicable penalties for a period of three years plus the current year.

- 14. Any notices, demands, communications, or modifications concerning this agreement will be in writing.
  
- 15. The assessment resulting from the Voluntary Disclosure Agreement is limited in scope and does not include a detailed review of accounting records. It is subject to a future audit covering Taxpayer's sales tax obligations as addressed in Section 150 of the Uniform Code. The Commission reserves the right to assess any other tax due or tax credit found at a later date for the time period covered by the assessment.

**FOR THE ALASKA REMOTE SELLER SALES TAX COMMISSION**

**By:** \_\_\_\_\_  
**SIGNATURE**

**Director** \_\_\_\_\_  
**TITLE**

\_\_\_\_\_  
**DATE**

**TAXPAYER**

**By:** \_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**TITLE**

\_\_\_\_\_  
**DATE**



**To: ARSSTC Policy Committee**

**From: Clinton Singletary, Statewide Municipal Sales Tax Director**

**Date: July 19, 2022**

**Re: Sourcing of goods – possible revision to Interpretation 2020.05**

#### Background

Interpretation 2020.05 was developed to clarify point of delivery, especially for circumstances where a 3<sup>rd</sup> party freight company is involved. Much of the guidance in the Interpretation is based on the definition of “receive” or “Receipt” which states: *the terms “receive” and “receipt” do not include temporary possession by a shipping company on behalf of the purchaser.*

However, the focus should not solely on the shipping company language in the definition of “receive” and “receipt”. A clause at the end of the definition of “point of delivery”, paragraph A, should be considered, arguably before the shipping company concept should be applied. The clause in question is “as known to the seller”.

#### Discussion

In writing Interpretation 2020.05, there was the expectation that the seller would know that a delivery address was a 3<sup>rd</sup> party freight forwarder. And with that knowledge, the seller would be expected to use a different address as the point of delivery.

There are some scenarios where this expectation is completely reasonable. These scenarios are ones where the seller is working closely with the buyer on the purchase, and the seller has first-hand knowledge that the purchase is being routed to the customer in AK, through a 3<sup>rd</sup> party freight forwarder. These scenarios are typically transactions **not** conducted through the seller’s website.

In comparison, sale transactions that are conducted solely through the seller’s website, where the buyer simply inputs a shipping address and billing address, are slightly different than the above scenarios. Sales through a website do not generally lead to the seller gaining first-hand knowledge that the delivery address is a 3<sup>rd</sup> party freight forwarder. Nor does the seller know for certain where the end destination is.

One assumption that was made in developing 2020.05 was that a seller would be able to notate certain delivery addresses as belonging to 3<sup>rd</sup> party freight forwarders. That may be possible for some sellers, but many online stores use POS software that automatically calculates the tax rate based on the delivery street address or ZIP code provided by the buyer.

The SSTGB published a Sourcing Issue Paper from 2002 (See Attachment A) which discusses this issue in some detail. In it, the paper clarifies that the 3<sup>rd</sup> party freight forwarder’s address should be used as the point of delivery when the seller only knows the 3<sup>rd</sup> party’s address and does not know the address to which the forwarder is to deliver the product.

#### Question for PC

Is the PC amenable to modifying 2020.05, to better clarify the question of “as known to seller” for scenarios involving a 3<sup>rd</sup> party freight forwarder?