



## Interpretation 2022.02

### Physical Presence in ARSSTC Member Communities

#### **Issue:**

What circumstances create physical presence for a seller in an ARSSTC Member Community? A seller's sales tax filing requirements for taxing jurisdictions across Alaska is based on the seller's physical presence or lack thereof in a community.

#### **Background:**

Remote seller is defined in Section 270 of the Uniform Code as *"a seller or marketplace facilitator making sales of goods or services for delivery within the State of Alaska without having a physical presence in the member jurisdiction in which delivery is being made."*

Section 270 of the Uniform Code also provides definitions of "remote sale" and "local sale". The difference between these definitions is whether the seller has physical presence in the jurisdiction where delivery is made.

Section 050 of the Uniform Code then outlines specific reporting requirements for sellers depending on whether they are making remote sales or local sales into a taxing jurisdiction.

The key question to be asked is what constitutes physical presence by a seller for purposes of filing with the ARSSTC and/or its member communities?

#### **Analysis**

Section 270 of the Uniform Code defines "physical presence" as follows:

*"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.*



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This definition outlines several standard situations that are typically used in identifying physical presence in a jurisdiction. Each of these will now be discussed in more detail.

### ***#1 - Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the member jurisdiction;***

This point addresses the usual “brick and mortar” physical presence standards. If a seller has or establishes any place of business within the boundaries of a jurisdiction, it is deemed to have physical presence in that jurisdiction.

This point also encompasses any business location from which an employee conducts business or administrative functions. Examples include but are not limited to: a regional accounting office, or storage facility for business inventory or equipment/property.

### ***#2 - Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the member jurisdiction;***

This point addresses situations where a business sends or maintains an employee, agent or other representative within a jurisdiction for the purpose of soliciting business or taking orders. Conducting these activities within a jurisdiction via a company representative creates physical presence in that community.

In general, simply having an employee residing in, visiting or traveling through a jurisdiction for some purpose other than that of soliciting business, taking orders or otherwise contributing to the business’ footprint in the jurisdiction would not create physical presence in that jurisdiction.

### ***#3 - Provides services or holds inventory within the boundaries of the member jurisdiction;***

This point addresses situations where the business either provides services or maintains inventory within the jurisdiction. The latter of these two is similar to point #1 of the physical presence definition in that maintaining inventory implies some form of physical location in which the inventory is stored. This is sufficient to establish physical presence in that jurisdiction.

Some examples of the business providing services include but are not limited to:

- Maintenance / repair services
- Installation services
- Delivery services
- Inspection services



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Regular performance of these types of services **by company employees** in a jurisdiction is sufficient to establish physical presence in that jurisdiction.

If a business only performs an occasional, isolated service in a jurisdiction, and does not otherwise maintain or pursue business activity in that jurisdiction, the occasional, isolated service is not sufficient to establish physical presence on its own.

### ***#4 - Rents or Leases property located within the boundaries of the member jurisdiction***

This point addresses situations where a business rents or leases tangible personal property. Rented or leased property is subject to sales tax based on where the property is located. In addition, the location of said property in a jurisdiction establishes physical presence in that jurisdiction.

This Interpretation does not address all aspects of physical presence. The following Interpretations address other aspects of physical presence:

- [Interpretation 2020.06](#) – Multi-Level Marketing & Physical Presence
- [Interpretation 2020.07](#) – Businesses w/ brick & mortar locations also conducting online sales
- [Interpretation 2020.08](#) – Rentals & Leases of Tangible and Intangible Personal Property
- [Interpretation 2021.02](#) – Sporadic Physical Presence