

Publication 146
Sales to American Indians and Sales on Indian Reservations
August 19, 2009
10:00 a.m. to 12:00 p.m.

Welcome and Introductions (10:00 – 10:15)

Discussion of Issues (10:15 - 11:45)

ITEM	ISSUE	PUBLICATION PAGE(S)	AGENDA PAGE #
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Summary (11:45-12:00)

CODE	ISSUE		SUMMARY	
	Closing Remarks			
	Important Dates	9/04/09	Last day to submit written comments before staff drafts revisions to Publication 146. *	
		10/23/09	Draft of revised Publication 146 distributed for review.	
		11/10/09	Meeting to discuss revised draft of Publication 146.	

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A. Purchases by Indian and non-Indian spouse or partner

- Annotation 305.0013 and Publication 146 currently provide that tax should be imposed on 50 percent of purchase price for purchase by Indian and non-Indian married couple or registered domestic partner.
- Numerous comments received regarding propriety of this practice and offering alternatives to this practice.
- Recently published annotation 305.0019.100 provides the following:
 - **305.0019.100 Indian and Non-Indian Couples.** Provided that all the other requirements for exemption are met under Regulation 1616, sales to couples involving Indians who have entered into officially recognized family relationships under either California law (i.e., a marriage or a domestic partnership under the Domestic Partner Rights and Responsibilities Act of 2003) or duly enacted tribal law should receive the same tax treatment regardless of whether the Indians have formed legal unions with Indians or non-Indians. Under such circumstances, neither the half-interest in the property attributable to the non-Indian nor the half-interest attributable to the Indian is subject to tax. 7/10/09.
- Annotation 315.0013 has been deleted.
- Publication 146 will be revised accordingly.

B. Use of property on Indian land

- Summary of comments received:
 - BOE should reconsider requirement that personal property must be used more than half of the time within Indian country during the first 12 months of ownership. Should consider partial use of property as satisfactory.
 - Provide additional guidance and examples regarding current requirements to qualify for exemption.
 - General opposition to requirement that use be documented since it is overly burdensome and the state lacks jurisdiction to impose tax on reservation activities of tribes or tribal members.
 - Use tax on vehicles and other merchandise is based on the value of an item not the amount of off-reservation use and the use tax operates as a tax upon on-reservation ownership. Thus application of these taxes to vehicles and other items owned by Indians, tribes, or tribal entities residing or located on reservation is impermissible and such provisions should be removed from Publication 146.
- Storage of property qualifies as use. If vehicle registration address is a location on a reservation, it will be presumed that property was purchased for use primarily on the reservation.
- Publication 146 will be revised accordingly.

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C. Documentation for exempt sales / purchases

- Summary of comments received regarding BOE-146-RES:
 - BOE-146 is not in compliance with California Notary Requirements.
 - Not all tribes have a notary public available.
 - Who pays the notary to come to the reservation to verify the sale?
 - Clarify that notarized statement is optional. Signing under penalty of perjury should be sufficient.
- Summary of comments received regarding documentation provided to retailers:
 - Exemption certificate contents should be at the discretion of the tribe since it is signed on the reservation.
 - Opposition to an Indian purchaser providing any documentary evidence as it is overly burdensome on the Indian purchaser and the burden should fall on the retailer to show that transfer of ownership and delivery occurred on the reservation. No evidence required of Indian proving ancestry or heritage.
 - Retailer must meet excessively burdensome documentation requirements to establish that the place of sale was in fact made on Indian lands.
 - Examples of documenting claimed exempt sales should include the Federal Register listing of Indian Entities Recognized as Eligible to Receive Services from the United States Bureau of Indian Affairs.
 - Residency – provide additional guidance as to what constitutes a “reliable document.”
 - Documentation of delivery may be included in contract.
 - Delivery on reservation – many do not have reliable USPS service, so obtain off-reservation PO Box.
 - Exemption certificates – request that BOE clarify that a properly validated exemption certificate, alone, is all that a purchaser need provide and the seller need request for later use as proof that an exempt sale took place.
- Summary of comments received regarding documenting use of property:
 - Provide sufficient and realistic examples of what constitutes “acceptable documentation” to prove use within Indian country.
 - Documenting use would require an Indian purchaser to keep a daily record of off-reservation use which is an onerous burden on Indian purchasers.
 - Clarify that documentation for exemption must be retained for 8 years.
- Publication 146 will be revised to clarify that notarized statements are not mandatory and to provide more specific guidance (with examples) regarding the documentation that a non-Indian retailer should retain to establish an exempt sale to an Indian purchaser and how long this documentation must be retained.

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D. Relevant law pertaining to state authority

- Summary of comments received:
 - Request inclusion of further information regarding relevant federal Indian law, including PL 280.
 - Responsibility for collection of use tax – clarify that purchaser is always responsible for payment of use tax. If collected by seller, how is the seller to determine whether the property will be used more than half the time off the reservation?
- Publication’s preface will be revised to provide further information regarding relevant federal Indian law and the ultimate responsibility of non-Indians who make on-reservation purchases from tribal retailers.

E. Construction contracts on Indian land

- Summary of comments received:
 - The section that discusses sales tax on materials used in on-reservation construction projects should be supplemented to include specific guidelines as to the manner in which tribes may satisfy BOE requirements.
 - Examples of contract language requested.
 - Delivery of materials on reservation – who may accept delivery?
 - Guaranteed minimum price contracts acceptable for contractor to remain retailer of materials?
 - Clarify that time and material contract not required, only that requirements of Regulation 1521(b)(2)(A)2 be met.
 - Clarify application of tax between lump sum contracts and time and material contracts.
- Publication 146 will be revised to clarify the proper application of tax to construction contracts on Indian land.