

Public Utility Taxation on Tribal Lands

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and
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**Presented to the
Indian Affairs Committee**

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Public Utility Taxation on Indian Lands

Our presentation today will cover three areas:

- **The current gross receipts tax regulations governing the taxation of receipts of public utilities and telecommunications companies from sales on Indian lands;**
- **Issues that have been identified concerning the implementation of the current rules; and**
- **Addressing these issues.**

Current Regulations (§3.2.4.9 NMAC)

- **Receipts from sales to an Indian tribe or a member of the tribe on that tribe's territory are not subject to gross receipts tax if taxation of such receipts is prohibited by federal law.**
 - **Generally, the spouse of a member of the tribe is also considered a member of the tribe for these purposes.**
- **Receipts of a public utility from selling electricity, natural gas or water and receipts from selling telecommunication services are covered by this exemption.**
- **To qualify for the exemption, the public utility or telecommunications company must demonstrate that (1) the sale is to an Indian tribe or a member of the tribe, and (2) that the sale occurs on the tribe's territory.**
- **The first requirement may be met by obtaining a statement signed by the purchaser of the electricity, natural gas, water, or telecommunications services that they are an Indian tribe or member of the tribe.**
 - **If the purchaser is an Indian tribe, the statement must be attested to by a tribal official.**

- **Tribal members must include their official tribal or BIA census number on the statement.**
- **If the tribe does not maintain an official census system, an official of the member's tribe must also sign and attest to the statement of a tribal member.**
- **The first requirement may also be met if the statement is provided by the Indian tribe on behalf of one or more of its members and attested to by a tribal official.**
- **Upon request, the Secretary of Taxation and Revenue may approve additional methods of meeting the first requirement.**
 - **Currently, no requests for additional methods are pending before the Secretary.**
- **The second requirement may be met by a public utility by keeping adequate records to document that the sale was through a meter located on the tribe's territory.**
- **The second requirement may be met by a telecommunications company for fixed location instruments by keeping adequate records to document that calls originate or terminate from the instrument located on the tribe's territory and that the call is billed to the Indian tribe or member of the tribe.**
- **For mobile instruments, if charges don't vary with the volume of calls the purchaser's address must be within the purchaser's tribe's territory.**
 - **If charges are made for calls, the call must originate or terminate within the purchaser's tribe's territory.**
 - **Telecommunications companies may estimate the volume of calls that originate or terminate off the tribe's territory.**

- **Note that the receipts of public utilities and telecommunications companies are not exempt from gross receipts tax if the receipts are from:**
 - **Sales to a person who is not an Indian tribe or member of a tribe;**
 - **Sales to an Indian tribe or member of a tribe other than the tribe on whose territory the sale took place; or**
 - **Sales outside the Indian tribe's territory (even if the sale is within another tribe's territory).**
- **In addition, the exemption does not apply to gross receipts taxes imposed by Indian pueblos, tribes, and nations.**

Issues in Implementing the Current Rules

- **The current rules are intended to provide an exemption from gross receipts tax for all receipts of public utilities and telecommunications companies from sales to Indian tribes and members of the tribe on the tribe's territory.**
- **In practice, however, gross receipts tax is being imposed on some of these receipts.**
 - **No reliable estimates are available on the extent the exemption is not applied in practice.**
- **Concerns about the practical application of the gross receipts tax exemption and similar exemptions from other state and local taxes prompted the Public Regulation Commission (PRC) to open an investigation into the matter on January 31, 2008.**
 - **The PRC had opened a similar inquiry in March 2001, which was closed in 2007.**
- **As part of its current investigation, the PRC held a workshop on May 19, 2008.**

- **The workshop was attended by representatives of public utilities and telecommunication companies (“service providers”), Indian tribal governments, the Taxation and Revenue Department, and other interested parties.**
- **A number of issues related to the implementation of the current rules were identified at the workshop:**
 - **Some members of Indian tribes may not be aware of the exemption and therefore not filing statements with their service providers.**
 - **Some members of Indian tribes have concerns about privacy, and are reluctant or unwilling to provide the information required under the current rules to the service providers.**
 - **Absent statements, the service providers cannot exempt their receipts from sales that would otherwise be exempt.**
 - **Pueblos and other tribal territories are dynamic, with both members and non-members moving back and forth from the territory, so statements need to be kept current.**
 - **Statements for the various service providers are not uniform and some are difficult to complete.**
 - **Some of the Indian territories have complicated geographic boundaries, which may be difficult to convert into service addresses.**
 - **Service providers maintain geographic information in various ways, so determining whether a location is within the boundaries of an Indian tribe’s territory may be difficult.**
 - **Pueblos, tribes, and nations that have imposed their own gross receipts tax do not want the exemption to apply to their tax.**

Addressing These Issues

- **The Taxation and Revenue Department is committed to working with Indian tribal governments and service providers to address these issues.**
 - **The PRC investigation provides a valuable forum for this work.**
- **We think that any lasting solution to these issues should aim to minimize the burden on Indian tribal governments and tribal members, avoid undue costs on service providers, and assure that the exemption is properly applied.**
- **Additional information and suggestions from Indian tribal governments and service providers will be necessary to craft a lasting solution.**
- **We are open to consideration of any suggestions that could lead to such a lasting solution.**