

SPECIAL NOTICE

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Tax Exemptions on Sales of Goods and Services to Indians and Indian Tribes Taking Place in Indian Country

Under federal law, states are prohibited from taxing Indians or Indian tribes in Indian country. The exclusion from taxes includes business and occupation (B&O), public utility, retail sales and use taxes, and certain other taxes. In some circumstances federal law preempts taxation of persons doing business with Indians, as well.

This special notice explains the tax exemptions available to businesses making sales to or providing services to Indians and Indian tribes in Indian country. Additionally, it clarifies the sales tax exemption provided to Indians and Indian tribes in Indian country.

“**Indian**” means a person on the tribal rolls of an Indian tribe. A person on the tribal rolls is also known as an “enrolled member” or a “member” or an “enrolled person” or an “enrollee” or a “tribal member.”

“**Indian country**” means all land within the limits of any Indian reservation. In addition, Indian country includes trust land located outside of a reservation.

“**Indian tribe**” means an Indian nation, tribe, band, community, or other entity recognized as an “Indian tribe” by the United States’ Department of the Interior. The phrase “federally recognized Indian tribe” and the term “tribe” have the same meaning as “Indian tribe.”

Business Tax Exemptions

Qualifying Business Activities

Exemptions are available for businesses that:

- ◆ Make sales of tangible personal property to a tribe or tribal members if the tangible personal property is delivered to the buyer in Indian country **AND** if:
 - ❖ The property is located in Indian country at the time of sale, **OR**
 - ❖ The seller has a branch office, outlet, or place of business in Indian country used to receive the order or distribute the property, **OR**
 - ❖ The sale is solicited by the seller while in Indian country.
- ◆ Perform services in Indian country for a tribe or for tribal members.
- ◆ Deliver a public utility service to a tribe or to tribal members in Indian Country.

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Business and Occupation (B&O) Tax Exemptions

- ◆ Businesses making sales of tangible personal property that they **deliver to the tribe or tribal members in Indian country** are exempt from the (retailing) B&O tax on such sales.
- ◆ Businesses performing retail services for tribes or tribal members (e.g., construction, auto repairs, tattoos) **in Indian country** are exempt from the (retailing) B&O tax on income from such services.
- ◆ Businesses performing professional and personal services for tribes or tribal members (e.g., tax preparation, engineering, beauty services, etc.) **in Indian country** are exempt from the (service) B&O tax on such charges.

In all three situations, the goods or services must be delivered on land associated with the person's tribe. In other words, it must be delivered to that person's reservation, or trust land of the tribe or a member of the tribe.

Public Utility Tax (PUT) and Public Utility Districts (PUD) Tax Exemptions

Businesses that deliver a public utility service to a tribe or to tribal members in Indian country are not subject to the public utility tax under Chapter 82.16 RCW or RCW 54.28.020 on such charges. The service has to be delivered to the Indian person's reservation or to trust land of the tribe or a member of the tribe.

Services Taking Place Both On and Off of Indian Country

For **Professional Services** performed both on and off of Indian country, the activity is subject to state tax to the extent that services are substantially performed outside of Indian country. See Rule 192 for additional information on "substantially performed."

For **Retail or Wholesale Services**, the portion of income relative to services actually performed outside of Indian country is subject to B&O (retailing or wholesaling) tax.

Documenting Tax-Exempt Transactions

Sellers and service providers should verify the tax-exempt status of sales made to or services provided to Indians by reviewing the buyer's identification and by obtaining a completed *Buyer's Retail Sales Tax Exemption Certificate* from the buyer. Examples of acceptable identification are:

- ◆ tribal membership card;
- ◆ letter from a tribal official;
- ◆ list of tribal members from a tribal official; and
- ◆ treaty fishery identification card.

If the buyer is personally known to the seller as a tribal member, it is unnecessary to present documentation. The seller should, however, identify the sale as exempt in its records. Records of tax exempt sales must be maintained for five years.

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Exemptions for Indians and Indian Tribes

Exemptions are available to enrolled Indians and their spouses, tribal members, or an Indian tribe.

- ◆ They must be members of a federally recognized tribe.
 - ❖ See www.goia.wa.gov for an up-to-date list of federally recognized tribes in Washington.
- ◆ The product or service must be **delivered to** the Indians on tribal lands or **performed on** tribal lands to which they belong.
 - ❖ Indians who take delivery of items or receive retail services on tribal land of a tribe other than their own are **not** eligible for sales tax exemption.

Retail Sales Tax

- ◆ Sales of tangible personal property (e.g., autos, furniture and appliances) delivered onto Indian country or purchased in Indian country are exempt from sales tax.
- ◆ Retail services (e.g., construction, auto repairs and tattoos) **performed in Indian country** are not subject to sales tax.

Refuse Collection Tax

Indians and Indian tribes are not subject to the refuse collection tax for services provided in Indian country, regardless of whether the refuse collection business hauls the refuse off of Indian country.

For information on fishing treaty rights, and other miscellaneous taxes (such as use, cigarette, tobacco, fish and timber excise taxes) and more in-depth discussions regarding the tax applications for Indians and Indian tribes, refer to Washington Administrative Code 458-20-192.

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