

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 5/29/03
Department Name: CAO
Department No.: 012
Agenda Date: 6/17/03
Placement: Departmental
Estimate Time: 30 minutes
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Michael F. Brown
County Administrator

STAFF CONTACT: Scott Ullery
Deputy County Administrator

SUBJECT: Proposed Amendment to Sales and Use Tax Regulation 1616(d), Federal Areas, Indian Reservations

Recommendation:

That the Board of Supervisors:

- A. Consider proposed amendments to Sales and Use Tax Regulation 1616(d), Federal Areas, Indian Reservations, which would exempt Indian Tribes and Indian Retailers from collecting use tax on the sale of certain tangible personal property sold on reservations, and
- B. Authorize the Chair of the Board to sign the attached letter (Attachment A) to the State Board of Equalization, expressing the County's opposition to the proposed amendments

Alignment with Board Strategic Plan:

The recommended actions are primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

The State Board of Equalization has requested written comments from interested parties on a proposed amendment to Sales and Use Tax Regulation 1616(d). If adopted, the amendment would remove the requirement for Indian tribes and Indian retailers to collect use tax on the sale of tangible personal property sold on a reservation, if the property

- “... is intended for use in on-reservation gaming activities, or to advertise or promote patronage of a tribal gaming facility through the display of the facility’s or the tribe’s name, logo, or other identifying information.”
- “... a) is made from raw materials produced on the reservation, b) reflects or illustrates tribal history, culture or traditions, c) is intended for use in an on-reservation activity, or d) is not generally available for purchase outside of a reservation.”

Local governments rely on sales and use tax revenues to support basic, mandated services. Every year, special interest groups seek to exempt additional transactions from sales and use tax. Every exemption further erodes the ability of local governments to fund mandated services. For this reason, the Board of Supervisors has considered and opposed similar efforts to exempt items from the collection of sales and use tax.

Additionally, further exempting Indian tribes and retailers from the collection of sales and use tax raises concerns that Indian tribes are gaining a competitive advantage over non-Indian retailers engaged in similar commercial sales activities.

Mandates and Service Levels:

Service level impacts of the proposed amendment, if adopted, are unknown, and will depend on the Board of Equalization’s interpretation of what tangible personal property meets the specified exemption tests.

Fiscal and Facilities Impacts:

The fiscal impact of the proposed amendment, if adopted, is unknown and will depend on the Board of Equalization’s interpretation of what tangible personal property meets the specified exemption tests.

Special Instructions:

The Clerk of the Board is requested to deliver the signed letter to the County Administrator’s office, attention: Scott Ullery.

June 17, 2003

State Board of Equalization
Attn: Ms. Diane Olson, Regulations Coordinator
MIC 80, P.O. Box 942879
450 N Street
Sacramento, CA 94279-0080

Subject: Comments on proposed amendments to Sales and Use Tax Regulation 1616(d), *Federal Areas, Indian Reservations*, which would exempt Indian tribes and Indian retailers from collecting use tax on the sale of certain tangible personal property sold on a reservation.

Board of Equalization:

This letter is in response to the Board of Equalization's April 30, 2003 letter to "interested parties," inviting written comments on this subject. The Santa Barbara County Board of Supervisors respectfully requests that these amendments not be adopted, and no change be made to the existing Regulation.

At a future and as yet to be scheduled meeting of the State Board of Equalization, your Board will consider amendments that would remove the requirement for Indian tribes and Indian retailers to collect use tax on the sale of tangible personal property sold on a reservation, if the property

- "...is intended for use in on-reservation gaming activities, or to advertise or promote patronage of a tribal gaming facility through the display of the facility's or the tribe's name, logo, or other identifying information."
- "...a) is made from raw materials produced on the reservation, b) reflects or illustrates tribal history, culture or tradition, c) is intended for use in an on-reservation activity, or d) is not generally available for purchase outside of a reservation."

The Board of Equalization's invitation for comments specifically requests written comments that address the requirements that regulatory amendments must fulfill in order to be approved by the Office of Administrative Law (OAL), particularly the standards of necessity, authority, clarity,

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and consistency (Government Code, Section 11349.1 et seq.). When the Board of Equalization considered an earlier version of these amendments on March 27, 2002, Board of Equalization staff recommended making no changes to Regulation 1616. The staff concluded that no regulatory amendment was required to achieve consistency with federal law, and that the proposed amendment was “too ambiguous to support consistent interpretation and application.” The amendments now under consideration attempt to better clarify the definition of “reservation-based value” than was provided previously; however, the attempt is woefully inadequate, and, we believe, your staff’s previous recommendation remains valid. The proposed amendments are too vague and ambiguous, and would likely result in varying interpretations and applications of the law.

Local governments rely on sales and use tax revenues to support basic and mandated services. Every year, special interest groups seek to exempt additional transactions from sales and use tax. Every exemption further erodes the ability of local governments to fund mandated services. The Board of Equalization’s recent exemption of meals, food, and beverages sold for consumption on Indian reservations will be particularly injurious to the County of Santa Barbara.

Exempting Indian tribes and Indian retailers raises concerns that Indian tribes are gaining a competitive advantage over non-Indian retailers engaged in similar commercial sales activities. Current regulations better maintain the competitive balance between Indian and non-Indian retailers with respect to the sale of tangible personal property to non-Indian purchasers.

Thank you for inviting our comments. Your positive consideration of these comments will be appreciated.

Sincerely,

Naomi L. Schwartz, Chair
Santa Barbara County Board of Supervisors

cc: Cliff Berg, Legislative Advocates