

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: 3/22/02
Department Name: County Administrator
Department No.: 012
Agenda Date: 3/26/02
Placement: Departmental
Estimate Time: 15 minutes
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Michael F. Brown
County Administrator

STAFF CONTACT: Jim Laponis / Lori Norton
568-3400 / 568-3421

SUBJECT: Proposed Amendment to Regulations Governing the Application of Tax to Sales by Retailers on Indian Reservations

Recommendation(s):

That the Board of Supervisors:

- A. Consider providing comments, to the State Board of Equalization, on proposed amendments to Regulation 1616(d)(3), Title 18, Division 2, Chapter 4, of the California Code of Regulations, which would exempt from sales tax meals, food, and beverages made at eating and drinking establishments on the reservations, and/or the sale of tangible personal property that has "reservation-based value".
- B. Authorize the Chair of the Board to sign the attached letter to the State Board of Equalization, supporting the State Board's staff recommendation to make no changes to Regulation 1616(d)(3).
- C. Direct staff to forward the signed letter to the State Board to consider at their hearing of March, 27, 2002.

Alignment with Board Strategic Plan:

The recommended action is consistent with all of the Board's adopted Strategic Plan Goals. Local governments are increasingly dependent on sales tax revenues to fund the provision of basic, mandated, services. Any amendment to existing regulations, which seeks to exempt retail sales from taxation, has a direct impact on the County's revenue base and the County's ability to fund services.

Executive Summary and Discussion:

On March 27, the State Board of Equalization will consider amendments to Regulation 1616(d)(3), of Title 18, Division 2, Chapter 4, of the California Code of Regulations. The amendments to be considered are as follows:

- Remove the requirement for Indian retailers to collect use tax on the sale of meals, food, and beverages made at eating and drinking establishments on the reservation; or
- Remove the requirement for Indian retailers to collect use tax on (1) the sale of meals, food, and beverages made at eating and drinking establishments on the reservation and, (2) the sale of tangible personal property that has “reservation-based value” as defined within the proposed language of the amendment; or
- Make no changes to the Regulation (State Board staff’s recommendation)

County staff recommends the Board of Supervisors supports the recommendation of the State Board of Equalization’s staff, and that no change be made to the existing Regulation. Local governments rely on sales and use tax to support basic, mandated services. Every year, special interest groups seek to exempt additional transactions from the imposition of sales and use tax. Every exemption further erodes the ability of local governments to fund mandated services.

Further, exempting Indian retailers raises concerns that Indian Tribes are gaining a competitive advantage over non-Indian retailers engaged in the same type of commercial activities. Current regulations maintain the competitive balance among Indian and on-Indian retailers on and off the reservation with respect to the sale of tangible personal property to non-Indian purchasers.

Background

In October 2001, the California Indian Gaming Association, which is an organization consisting of 74 sovereign tribal governments, passed a Resolution supporting an amendment of the Board of Equalizations Regulation 1616. As passed, the Resolution would provide, “ that Indian retailers are not required to collect use tax on the sale or service of food or beverages sold or served for consumption on an Indian reservation and the on-reservation sale of other tangible personal property by an Indian retailer is exempt from use tax liability when the transaction involves “reservation based value” as that term has been interpreted by applicable decisions of the United States Supreme Court and other federal courts. As a result, the State Board of Equalization directed their staff to begin the regulatory process to consider whether Regulation 1616 should be amended.

In essence, the California Indian Gaming Association believes that Regulation 1616 does not conform to Federal Law, which provides that the State may not impose a tax on the sale or use of tangible personal property where it is prohibited from doing so under the Constitution or laws of the United States or under the Constitution of the State.

The State Board’s staff cites case law, which upholds its authority to collect taxes as prescribed by Regulation 1616. Additionally, the State Board is currently engaged in litigation over this specific issue. The case of *Auga Caliente Band of Cahuilla Indians v. Klehs, et al.* is pending before the United States District Court. The suit challenges the State Board’s determination that the Tribe is required to collect and remit use taxes for meals and beverages purchased by non-Indians at an on-reservation casino hotel. The Agua Caliente Tribe claims that the Tribe’s on-reservation sales of meals and beverages to non-Indians are exempt from tax under Federal law pursuant to the Federal Gaming Regulatory Act.

In a judgment dated November 27, 2001, the United States District Court determined that the tribe is not required to collect and remit tax on the sale of food to non-Tribal members for consumption at its on-

reservation casino hotel, but requires the Tribe to collect and remit tax on sales of liquor to non-Tribal members for consumption at the Tribe's on-reservation casino hotel. The parties are seeking clarification of the judgment as to whether the Tribe is obligated to collect and remit tax on the sales to non-Tribal members of beverages other than liquor, that are sold for consumption at the Tribe's on-reservation casino hotel. Action by the State Board, prior to the resolution of the above suit, would be premature.

Fiscal and Facilities Impacts:

To date, the amount of sales tax received by the County of Santa Barbara for food and beverage sales at the Chumash Casino in Santa Ynez is insignificant. However, proposed expansion plans for the Chumash Casino could result in substantial taxable food and beverage sales.

Special Instructions: If directed by the Board, please have the Chair sign the attached letter to the State Board of Equalization. Further, please give the signed copy of the letter to Brenda Castillo, Office of the County Administrator to fax to the following: Ms. Diane Olson, Regulations Coordinator, fax (916) 324-3984. PLEASE NOTE. THE SIGNED LETTER MUST BE RECEIVED BY THE BOE BY MARCH 27th, TO BE CONSIDERED.

cc: Cliff Berg, Governmental Advocates
Jean Hurst, CSAC
Vincent Armenta, Chairman, Santa Ynez Band of Mission Indians