

Working Together on the Collection of Sales and Use Taxes on the Standing Rock Sioux Reservation

TRIBAL STATE RELATIONS COMMITTEE

Chairman D. Johnson

Testimony Provided By Karol Two Bears, Tax Director

Standing Rock Sioux Tribe

September 2, 2014

Greetings to Chairman Johnson and other esteemed members of the Committee.

Today I would like to discuss with you the issue of sales and use tax collection on the Standing Rock Sioux Reservation.

The Standing Rock Sioux Tribe (SRST) is a sovereign nation. Just like any other sovereign - including the State of North Dakota - the Tribe has the authority to impose and collect certain taxes to help offset the costs of providing governmental services to its constituents. Taxes imposed by the Tribe are used for everything from education, road maintenance, and healthcare to providing welfare assistance for tribal members - very similar to the State government.

SRST currently imposes and collects taxes from its members on motor fuels, special fuels, and tobacco products within the North Dakota portion of the Reservation. SRST also has imposes and collects taxes for the following within the South Dakota portion of Standing Rock; motor fuels, special fuels, tobacco products, sales and use, contractors excise, alternate contractor's excise and tourism.

SRST and the State of North Dakota each have separate, but similar, jurisdiction to impose their taxes within Sioux County, which is on the Standing Rock Sioux Reservation. Well-settled law says that the State has legal authority to impose state taxes on non-tribal members in Sioux County, but the Tribe also has authority to impose tribal taxes on tribal members in the same geographic region.

In order to avoid lengthy and expensive legal battles over which government has the right to tax which citizens, SRST and the State have entered into tax collection agreements. SRST currently has agreements in place with the State of North Dakota for the collection and pro-rata distribution of taxes on motor fuels, special fuels, and tobacco products sold on the North Dakota portion of the Standing Rock Reservation. These agreements were entered into by the State under the authority granted in NDCC Chapter 54-40.2 "Agreements between Public Agencies and Indian Tribes" which provides that "[a]ny one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law...". NDCC §54-40.2-02.

Under this grant of authority, the North Dakota Tax Commissioner and the Governor have entered into a number of agreements with the four Indian tribes in North Dakota for the collection and sharing of motor fuels and special fuels taxes, as well as cigarette and tobacco taxes. This system, in which the State collects the tax and then remits a portion back to the Tribe based on a formula derived from US Census data, works well for both governments. It also works well for the consumer at the gas pump or in line to buy tobacco products because it allows for seamless transactions.

In 2013 SRST approached the ND Tax Commissioner about renewing its current tax agreements for motor fuels, special fuels, and tobacco products. The Tribe also requested that the State enter into a new agreement for the collection and sharing of sales and use taxes on the Standing Rock Reservation.

Earlier this year the ND Tax Commissioner's Office responded to SRST's request for a sales/use tax agreement by stating that it believes the creation of a sales/use tax agreement with the Tribe will require legislative approval. This position was echoed by representatives of the Governor's office in a meeting between State and Tribal officials. When asked why or how the Governor could, under the authority of NDCC Chapter 54-40.2, enter into tax collection agreements with the Tribe for motor fuels, special fuels, and tobacco products, but not sales/use taxes, representatives of the Tax Commissioner responded by stating that the point of taxation is different with sales/use taxes, therefore the Governor does not have authority to enter into such agreements without legislative approval.

Mr. John Walstad, Legal Division Director of the ND Legislative Council, recently reviewed this issue at the request of District 31 Rep. Jim Schmidt. Mr. Walstad is of the opinion that the NDCC chapter under which previous tribal-state tax collection agreements have been executed was not created in contemplation of tax agreements. He suggested that future tribal-state tax collection agreements be modeled after the NDCC statute that was developed to allow for the sharing of oil extraction and production taxes on the Fort Berthold Reservation.

So the end result is that, as explained earlier, the State does not have jurisdiction to impose state taxes over tribal members on an Indian reservation, but that is exactly what is happening right now in Sioux County. There is a very real probability that the State is currently illegally collecting sales/use taxes from SRST members who buy products or services in Sioux County. Until a mechanism is put in place that allows for the Tribe and the State to work cooperatively to collect sales/use taxes on the North Dakota portion of the Standing Rock Sioux Reservation, both governments are losing: the State is exposing itself to legal action for the illegal imposition of sales/use taxes on Tribal members, and the Tribe is unable to develop a much-needed revenue stream for governmental operations.

The Standing Rock Sioux Tribe would like to again raise this issue with the Committee. The Tribe would like to engage the ND Legislature in creating a law that would delegate the authority to enter into sales and use tax collection agreements with Tribal governments to the purview of the Governor's Office. The Tribe also urges the ND Legislature to consider including in this delegation of authority not only sales and use taxes, but other taxes as well.

Thank you.