

Mashantucket Pequot Tribal Nation

Sales Tax Binder for Third-Party Businesses Operating on the MPTN Reservation



Revised May 4, 2015

Mashantucket Pequot Tribal Nation

Sales Tax Binder for Third-Party Businesses Operating on the MPTN Reservation

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SECTION 1

GENERAL COMPLIANCE REQUIREMENTS

**Mashantucket Pequot Tribal Nation
Sales Tax Binder for Third-Party Businesses Doing Business on the MPTN
Reservation**

1. General Compliance Requirements

a. Overview

Businesses operating on the Mashantucket Pequot Tribal Nation's (MPTN) Reservation and owned by individuals or entities, other than MPTN or its enrolled tribal members, are considered "third-party businesses" (TPBs). All TPBs must comply with MPTN and State of Connecticut tax registration and reporting requirements. Although TPBs must be concerned with both jurisdictions, TPBs are not subject to double taxation on any individual transaction. Below is a break-down of the types of MPTN sales taxes and the related requirements.

Note: Businesses owned by the MPTN and MPTN enrolled tribal members must also comply with the MPTN General Revenue and Taxation requirements and portions of the State of Connecticut tax laws but this binder is devoted to transactions by third-party businesses.

b. Registration Requirements

TPBs must register with the MPTN Office and Revenue and Taxation and with the State of Connecticut. MPTN registration requirements for TPBs which lease real property on the MPTN Reservation satisfy the MPTN registration requirements upon signing a lease agreement with MPTN. Other businesses must notify the MPTN Office and Revenue and Taxation (OR&T) in writing informing the OR&T of the businesses' intentions prior to commencing operations on the MPTN Reservation.

Businesses must register with the Connecticut Department of Revenue using Form REG-1. Refer to Section 7 of this binder.

c. Food & Beverage

TPBs selling non-alcoholic food and/or beverages on the MPTN Reservation are subject to MPTN sales tax collection and reporting requirements. The imposition of the MPTN sales tax is described on Section 2.2 of the General Revenue & Taxation Regulations of the Mashantucket Pequot Tribal Nation (Section 2 of this binder). Reporting sales tax collections to MPTN and remitting the taxes must be done on Form MP-100. Refer to Section 1.7 of the General Revenue & Taxation Regulations of the Mashantucket Pequot Tribal Nation (Section 2 of this binder) and Section 5 of this binder.

Refer to the Complimentary Sales Tax Credit and the Credit for Taxes Paid to Another Jurisdiction below (Sections 1.g. and 1.h. below).

d. Hotel Occupancy

TPBs selling hotel rooms on the MPTN Reservation are subject to MPTN sales tax collection and reporting requirements. The imposition of the MPTN sales tax is described on Section 2.1 of the General Revenue & Taxation Regulations of the Mashantucket Pequot Tribal Nation (Section 2 of this binder). Reporting sales tax collections to MPTN and remitting the taxes must be done on Form MP-100. Refer to Section 1.7 of the General Revenue & Taxation Regulations of the Mashantucket Pequot Tribal Nation (Section 2 of this binder) and Section 5 of this binder.

Refer to the Complimentary Sales Tax Credit and the Credit for Taxes Paid to Another Jurisdiction below (Sections 1.g. and 1.h. below).

e. Retail Sales

TPBs selling goods on the MPTN Reservation are subject to MPTN sales tax collection and reporting requirements. The imposition of the MPTN sales tax is described on Section 2.3 of the General Revenue & Taxation Regulations of the Mashantucket Pequot Tribal Nation (Section 2 of this binder). Reporting sales tax collections to MPTN and remitting the taxes must be done on Form MP-100. Refer to Section 1.7 of the General Revenue & Taxation Regulations of the Mashantucket Pequot Tribal Nation (Section 2 of this binder) and Section 5 of this binder.

Refer to the Complimentary Sales Tax Credit and the Credit for Taxes Paid to Another Jurisdiction below (Sections 1.g. and 1.h. below).

f. Services

The MPTN General Revenue and Taxation code does not impose a tax on services sold on the MPTN Reservation.

g. Admissions Sales

TPBs selling access to a place of amusement, entertainment, or recreation on the MPTN Reservation are subject to MPTN sales tax collection and reporting requirements. The imposition of the MPTN sales tax is described on Section 2.5 of the General Revenue & Taxation Regulations of the Mashantucket Pequot Tribal Nation (Section 2 of this binder). Reporting sales tax collections to MPTN and remitting the taxes must be done on Form MP-100. Refer to Section 1.7 of the General Revenue & Taxation Regulations of the Mashantucket Pequot Tribal Nation (Section 2 of this binder) and Section 5 of this binder.

Refer to the Complimentary Sales Tax Credit and the Credit for Taxes Paid to Another Jurisdiction below (Sections 1.f. and 1.g. below).

h. Complimentary Sales Tax Credit

The MPTN General Revenue and Taxation Regulations generally define complimentary sales as the provision of any goods or services, including rooms, pursuant to MPTN's Wampum Point or similar system that entitles the recipient/customer to a 100% discount through the use of points earned at Foxwoods. Although MPTN sales tax applies to cash sales and complimentary, a TPBs tentative sales tax obligation is reduced by the sales taxes attributed to complimentary sales (refer to the General Revenue & Taxation Regulations of the Mashantucket Pequot Tribal Nation in Section 2 of this binder).

Complimentary sales are treated as a sale to Foxwoods and a promotional giveaway from Foxwoods to the individual customer (see also Connecticut Legal Ruling 2002-3).

i. Credit for Taxes Paid to Another Jurisdiction

A credit is allowed against a TPBs tentative sales tax obligation if any taxable property or services are properly subject to sales or use tax in another jurisdiction and sales or use tax is paid to such jurisdiction, provided such property or services are also subject to the MPTN General Revenue and Taxation Code.

In the case of taxes paid to Connecticut for complimentary sales of alcohol, the credit amount is equal to the amount reimbursed by Foxwoods for such sales multiplied by the Connecticut sales tax rate on alcohol sales.

SECTION 2

**GENERAL REVENUE AND TAXATION CODE
OF THE MASHANTUCKET PEQUOT TRIBAL
NATION**

PREAMBLE

The Mashantucket Pequot Tribal Nation has enacted this General Revenue and Taxation Code as a means to raise revenue for the protection and enhancement of the socio-economic development of the Mashantucket Pequot Tribe and the tribal community, and the provisions of tribal governmental services such as, but not limited to, health and human services, education and school facilities, public works and transportation, maintenance of tribal facilities, public safety and law enforcement services, and the regulation of economic activities occurring within the Mashantucket Pequot Reservation.

The enactment of the General Revenue and Taxation Code is pursuant to and expression of the governmental powers of the Mashantucket Pequot Tribal Nation which have been expressly recognized by the Connecticut Indian Claims Settlement Act of 1983, 25 U.S.C. §§1751-1760, and the governmental powers of the Tribe which are embodied in the Mashantucket Pequot Constitution and By-Laws.

Various fees and charges currently are being assessed and collected as part of the Tribe's regulatory and licensing responsibilities of the Gaming Enterprise. The has determined that the imposition of fees, charges, and taxes are a necessary part of the governmental regulation of the public health, safety, welfare and integrity of the tribal gaming operations as well as the management of certain economic activities conducted within the Mashantucket Pequot Reservation. Such fees, charges, and taxes will be reasonably related to the cost of the Tribe's regulations of such activities, and for the management of economic activities.

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CHAPTER 1 ADMINISTRATION

Section 1. Office of Revenue and Taxation

The Office of Revenue and Taxation under the control of the Tribal Finance Committee, is responsible for administering the General Revenue and Taxation Code of the Mashantucket Pequot Tribal Nation. Among other powers, the Office of Revenue and Taxation may issue regulations and make rulings necessary to carry out the Tribe's revenue laws, examine the records of any person liable for sales tax and require reports from sellers as necessary to enforce the tax.

Contact Information: The mailing address of the Office of Revenue and Taxation is, 1 Matt's Path. P.O. Box 3008, Mashantucket, CT 06339-3008. The telephone number is (860) 396-3175.

Section 2. Records and Record Keeping

a. The method of accounting used for financial statement purposes must be used to comply with the General Revenue and Taxation Code unless permission is granted by the Office of Revenue and Taxation.

b. Every seller, retailers and person liable to collect any taxes or fees has to keep records for a period of at least three years from the date the return was filed. All of these records are subject to audit.

Section 3. Collections and Remittance

a. Retailers are responsible for collecting and remitting sales taxes. Retailers are Collection Agents and, as such, must register with the Office of Revenue and Taxation, unless the retailer is wholly owned and operated by the Mashantucket Pequot Tribal Nation. A Collection Agent means any person responsible to collect taxes pursuant to the General Revenue and Taxation Code. A Collection Agent is liable for uncollected taxes, and therefore, is a taxpayer.

The Office of Revenue and Taxation is authorized to issue registration procedures, forms and instructions to administer the General Revenue and Taxation Code.

b. All sellers are liable for collecting and remitting sales tax must file period returns as provided by the Office of Revenue and Taxation.

CHAPTER 2 HOTEL OCCUPANCY

Section 1. Definitions

- a. “Complimentary” or “Comp” means any provision of goods or services, including rooms, as evidenced by a Wampum Point Charge or other similar credit system. For the purposes of this tax any rooms or services provided on a Comp basis are considered sales.
- b. “Hotel” means any building regularly used and kept open as such for the feeding and lodging of guests.
- c. “Gross Receipts” mean the total amount charged for the room and any other occupancy-related services. Gross Receipts are deemed to have been received on a daily basis as rooms are rented and services are provided.
- d. “Occupancy” means the use or possession, or the right to the use or possession, of any room or rooms in a hotel or lodging house or the right to the use or possession of the furnishings or the services and accommodations accompanying the use and possession of such room or rooms.
- e. “Retailer” means any person selling goods or services on the Mashantucket Pequot Tribal Nation’s Reservation.
- f. “Room” means any room or rooms of any kind in any part or portion of a hotel or lodging house let out for use or possession for lodging purposes.

Section 2. Imposition and Rate of Tax

- a. For the privilege of the use and occupation of a room in a hotel located on the Mashantucket Pequot Reservation for a consideration, a tax is hereby imposed on all use and occupancy of any room or rooms and occupancy-related services at a rate of fifteen percent (15%) with respect to each use and occupancy of any room or rooms in a hotel or lodging house.
- b. The tax shall be imposed upon the person for whom the room, goods or services are provided and collected by the provider of the room, goods or services.

Historical Note: The Hotel Occupancy Tax Rate from the Code’s inception to August 31, 2009 was 12%. TCR072309-06 of 09 approved the rate increase to 13% effective September 1, 2009. TCR 060211-01 of 03 approved the rate increase to 15% effective July 1, 2011.

CHAPTER 3 FOOD & BEVERAGE

Section 1. Definitions

- a. "Person" means and includes an individual, firm, association, corporation, unincorporated instrumentality, or any other group or combination acting as a unit.
- b. "Sale" and "Selling" means and include the furnishing, preparing, or serving for a consideration of food, meals or drinks.
- c. "Sales Price" means the total amount for which goods or service is sold or the total amount received for any service rendered, whether paid in money or otherwise, without deduction on account except for any item, good or service exempt from taxation. Such total amounts include all of the following: (1) any services that are part of the sale; and (2) any amount for which credit is given to the purchaser by the Seller unless provided otherwise by the Regulations; and (3) all receipts, cash, credits and property of any kind.

Section 2. Imposition and Rate of Tax

- a. For the sale of food and beverage in any location on the Mashantucket Pequot Reservation, a tax is hereby imposed at the rate of 6.35% of the total sales price.
- b. The tax shall be imposed upon the person purchasing the good and services and collected by the provider of the goods and services.

Historical Note: The Retail Sales Tax rate from the Code's inception to August 31, 2009 was 6%. TCR 060211-01 of 03 approved the rate increase to 6.35% effective July 1, 2011.

CHAPTER 4 RETAIL

Section 1. Definitions

- a. "Person" means and includes any individual, firm, association, corporation, unincorporated entity, or other group or combination acting as a unit.
- b. "Sale" or "Selling" mean and include the furnishing, preparing, or serving for a consideration of tangible personal property.
- c. "Sale Price" means the total amount for which goods are sold whether paid in money or otherwise, without the deduction on account for any item, good or service exempt from taxation. Such total amounts include all of the following: (1) any amount for which credit is given to the purchaser by the seller unless provided otherwise by Regulation; and (2) all receipts, cash, credits, and property of any kind.

Section 2. Imposition and Rate of Tax

- a. For the sale of tangible personal property in any location on the Mashantucket Pequot Reservation, a tax is hereby imposed at a rate of 7.35% of the total sales price.
- b. The tax shall be imposed upon the person purchasing the good and collected by the provider of the goods.

Historical Note: The Retail Sales Tax rate from the Code's inception to August 31, 2009 was 6%. TCR072309-06 of 09 approved the rate increase to 7% effective September 1, 2009. TCR 060211-01 of 03 approved the rate increase to 7.35% effective July 1, 2011.

CHAPTER 5 ADMISSIONS

Section 1. Definitions

a. "Person" means and includes any individual, firm, association, corporation, unincorporated entity, or any other group or combination acting as a unit.

b. "Admissions charge" means the amount assessed for the right or privilege to have access to a place or location where amusement, entertainment or recreation is provided.

Section 2. Imposition and Rate of tax.

a. There is hereby imposed a tax of ten percent (10%) on the admission charge to any place of amusement, entertainment or recreation located within the Mashantucket Pequot Reservation, except that no tax shall be imposed with respect to any admission charge (1) when the admission charge is less than one dollar; (2) to any event at the Mashantucket Pequot Museum and Research Center; and (3) to Mashantucket Pequot Bingo events.

b. The tax shall be imposed upon the Person receiving the right or privilege of admission and collected by the provider of the event.

CHAPTER 6
REAL ESTATE HOME OWNERSHIP

Section 1. Imposition and Rate of Tax

a. In lieu of the monthly administrative fee (presently \$75) charged to each homeowner, there is hereby imposed a Real Estate Home Ownership Tax at a rate of \$900.00 per annum, payable at the rate of \$75.00 per month.

b. The Real Estate Home Ownership Tax shall be payable by every homeowner on the Mashantucket Pequot Nation's Reservation incident to his/her ownership interest in a home under any Tribal Housing Program.

Section 2. Effective Date

The Real Estate Home Ownership tax shall be effective January 1, 1998.

SECTION 3

GENERAL REVENUE AND TAXATION REGULATIONS OF THE MASHANTUCKET PEQUOT TRIBAL NATION

Refer to separate pdf file.

SECTION 4

**MASHANTUCKET PEQUOT TRIBAL NATION
SALES TAX RETURN – FORM MP-100**

Mashantucket Pequot Tribal Nation

Sales Tax Return

Form MP-100

Name: _____

Address: _____

For Period Ending: _____

Filing Period: _____ Quarter
 _____ Month

Mashantucket Pequot Tribe
 Tax Registration Number: _____

Federal ID: _____

	<u>Gross Receipts</u>	<u>Tax Rate</u>	<u>Tax Amount</u>
1. Hotel Occupancy Sales.....	_____	_____	_____
2. Food and Beverage Sales	_____	_____	_____
3. Retail Sales	_____	_____	_____
4. Admissions Sales	_____	_____	_____
5. Adjustments (itemize; attach schedule if necessary):			
_____			(_____)
_____			(_____)
6. Gross Amount of Tax Due (Tentative Tax Liability)			_____
7. Credits (itemize; attach schedule if necessary):	<u>Hotel</u>	<u>Food &</u>	
	<u>Occupancy</u>	<u>Beverage</u>	<u>Retail</u> <u>Admissions</u> <u>Total</u>
Complimentary Sales Credit	_____	_____	(_____)
Taxes Paid to Another Jurisdiction.....	_____	_____	(_____)
Prior Period Refund Credit.....	_____	_____	(_____)
8. Net Amount of Tax Due			_____
9. Additional Amounts for Late Payment:.....Interest:_____Penalty:_____			
10. Total Amount Due or (Refund)			_____
<input type="checkbox"/> check attached <input type="checkbox"/> funds wired	<input type="checkbox"/> refund overpayment <input type="checkbox"/> apply to next period		

 Taxpayer's Signature

 Title

 Date

Check Payable to: Mashantucket Pequot Tribe, Office of Revenue and Taxation
 Mail to: Mashantucket Pequot Tribe, Office of Revenue and Taxation, Attn: Finance Department, 1 Matt's Path, P.O. Box 3008,
 Mashantucket, CT 06338-3008

SECTION 5

**FORM MP-100 – COMPREHENSIVE
EXAMPLE**

Mashantucket Pequot Tribal Nation Sales Tax Binder for Third-Party Businesses Doing Business on the MPTN Reservation

5. Form MP-100 – Comprehensive Example

TPBs generally must file Form MP-100 each month with MPTN Office of Revenue and Taxation. Below is an example of how to complete Form MP-100.

Taxpayer: ABC Company

Operations: hotel, restaurant, retail store, lounge requiring a covercharge, and a \$5 per car valet service

At the end of ABC Company's first month of operations (March 20XX), their financial statements reflected the following activity. The Tribal sales tax return and payment were due April 30, 20XX but the tax return and check were mailed late (evidenced by a postmark date and date received stamp). The tax return and payment were received on May 20, 20XX.

ABC Company Information:

- Address - 5 Main Street, Boston, MA
- MPTN tax registration number: 999
- Federal Employer Identification Number: 12-3456789
- Sales settled using Dream Reward Points are reimbursed to ABC Co. at 80% of retail sales price.

\$ 50,000 Hotel Occupancy Revenue – Cash
\$115,000 Hotel Occupancy Revenue – Complimentary
\$ 43,000 Food Revenue – Cash (includes non-alcoholic drinks)
\$ 29,000 Food Revenue – Complimentary (includes non-alcoholic drinks)
\$ 22,000 Alcoholic Beverage Revenue – Cash
\$ 19,000 Alcoholic Beverages Revenue – Complimentary
\$ 4,000 Retail Sales – Cash – taxable products
\$ 3,500 Retail Sales – Cash – exempt products (clothing)
\$ 3,300 Retail Sales – Complimentary – taxable products
\$ 3,100 Retail Sales – Complimentary - exempt products (clothing)
\$ 2,700 Lounge Covercharge – Cash
\$ 1,800 Lounge Covercharge – Complimentary
\$ 750 Valet Service Revenue – Cash
\$ 450 Valet Service Revenue – Complimentary
\$ 51,000 Purchase of Goods from a Supplier in Georgia – no sales tax paid

MPTN Form MP-100 should be completed as follows. A completed form is attached.

- Line 1 – Hotel Occupancy Sales - \$165,000 (hotel cash revenue of \$50,000 plus hotel complimentary revenue of \$115,000). Tax rate of 15% and tax amount of \$24,750.
- Line 2 – Food & Beverage Sales - \$113,000 (cash food revenue of \$43,000 plus food complimentary revenue of \$29,000 plus cash alcoholic beverage revenue of \$22,000 plus complimentary alcoholic beverage revenue of \$19,000). Tax rate of 6.35% and tax amount of \$7,176.
- Line 3 – Retail Sales - \$13,900 (cash retail sales of \$4,000 and \$3,500 plus complimentary retail sales of \$3,300 and \$3,100). Tax rate of 7.35% and tax amount of 1,022.
- Line 4 – Admissions Sales - \$4,500 (cash and complimentary lounge covercharges of \$2,700 and \$1,800, respectively). Tax rate of 10% and tax amount of \$450.
- Line 5 – Adjustments – \$6,600 Retail Exempt Clothing (\$3,100 exempt cash sales plus \$3,500 exempt comp sales). Tax rate of 7.35% and tax credit amount of \$485.
- Line 7 – Complimentary Sales Credit
 - o Hotel Occupancy - \$17,250 credit (hotel complimentary revenue of \$115,000 multiplied by 15%).
 - o Food & Beverage - \$3,048 credit (the sum of food complementary revenue of \$29,000 plus alcohol complimentary revenue of \$19,000 multiplied by 6.35%).
 - o Retail - \$243 credit (complimentary retail taxable products of \$3,300 multiplied by 7.35%).
 - o Admissions - \$180 credit (complimentary lounge covercharge multiplied by 10%).
- Line 7 – Taxes Paid to Another Jurisdiction
 - o Food & Beverage - \$2,362 (cash alcoholic beverages cash revenue of \$22,000 plus reimbursement by Foxwoods of points used to settle alcohol comp sales \$15,200 [\$19,000 multiplied by the MPGE settlement rate of 80%] multiplied by 6.35%).
 - o Retail - \$254 (cash retail sales of taxable products of \$4,000 multiplied by 6.35%).
- Line 8 – Sum of Lines 6 and 7 - \$9,576.
- Line 9 – Interest - \$64 (net amount of tax due \$9,576 multiplied by 1%, multiplied by 20 days, and divided by 30 days).
- Line 9 – Penalty - \$1,436 (net amount of tax due \$9,576 multiplied by 15%; according to regulation 1.7.1.4, a taxpayer is subject to either the Failure to Pay penalty or the Failure to File penalty but not both).
- Line 10 – Total Amount Due or (Refund) - \$11,076 (sum of lines 8 and 9).

Note: the Valet Service Revenue settled by points (complimentary) do not need to be shown on the Tribal sales tax return because services are not subject to MPTN sales tax. These services are also not subject to Connecticut sales tax because the sale is treated as a sale to Foxwoods on the tribal reservation (exempt pursuant to Connecticut DRS Ruling 2002-3).

The following taxes should be paid to the State of Connecticut:

- Food & Beverage - \$2,362 (cash alcoholic beverages cash revenue of \$22,000 plus reimbursement by Foxwoods of points used to settle alcohol comp sales of \$15,200 [\$19,000 multiplied by the MPGE settlement rate of 80%] multiplied by 6.35%).
- Retail - \$254 (cash retail sales of taxable products of \$4,000 multiplied by 6.35%).
- Valet Revenue - \$48 (cash sales of \$750 multiplied by 6.35%)
- Use tax of \$3,239 for the goods purchased from a supplier in Georgia (\$51,000 multiplied by 6.35%)

Mashantucket Pequot Tribal Nation

Sales Tax Return

Form MP-100

Name: ABC Company

For Period Ending: March 20XX

Address: 5 Main Street

Filing Period: Quarter

Anytown, State XXXXX

X Month

Mashantucket Pequot Tribe

Tax Registration Number: 999

Federal ID: 12-3456789

	<u>Gross Receipts</u>	<u>Tax Rate</u>	<u>Tax Amount</u>
1. Hotel Occupancy Sales.....	<u>\$165,000</u>	<u>15%</u>	<u>\$24,750</u>
2. Food and Beverage Sales	<u>113,000</u>	<u>6.35%</u>	<u>7,176</u>
3. Retail Sales	<u>13,900</u>	<u>7.35%</u>	<u>1,022</u>
4. Admissions Sales	<u>4,500</u>	<u>10%</u>	<u>450</u>
5. Adjustments (itemize; attach schedule if necessary):			
<u>Retail Exempt Clothing</u>	<u>6,600</u>	<u>7.35%</u>	<u>(485)</u>
.....			<u>()</u>
6. Gross Amount of Tax Due (Tentative Tax Liability)			<u>\$32,913</u>
7. Credits (itemize; attach schedule if necessary):	<u>Hotel</u>	<u>Food &</u>	
	<u>Occupancy</u>	<u>Beverage</u>	<u>Retail</u> <u>Admissions</u> <u>Total</u>
Complimentary Sales Credit	<u>\$17,250</u>	<u>\$3,048</u>	<u>\$243</u> <u>\$180</u> <u>(20,721)</u>
Taxes Paid to Another Jurisdiction.....	<u>2,362</u>	<u>254</u>	<u>(2,616)</u>
Prior Period Refund Credit.....			<u>()</u>
8. Net Amount of Tax Due			<u>\$9,576</u>
9. Additional Amounts for Late Payment:.....	Interest: <u>\$64</u>	Penalty: <u>\$1,436</u>	<u>\$1,500</u>
10. Total Amount Due or (Refund)			<u>\$11,076</u>
<u>X</u> check attached	<u>refund overpayment</u>		
<u> </u> funds wired	<u> </u> apply to next period		

Taxpayer's Signature

Title

Date

Check Payable to: Mashantucket Pequot Tribe, Office of Revenue and Taxation
 Mail to: Mashantucket Pequot Tribe, Office of Revenue and Taxation, Attn: Finance Department, 1 Matt's Path, P.O. Box 3008,
 Mashantucket, CT 06338-3008

SECTION 6

**CONNECTICUT INFORMATION
PUBLICATION – GETTING STARTED IN
BUSINESS**

**Mashantucket Pequot Tribal Nation
Sales Tax Binder for Third-Party Businesses Doing Business on the
MPTN Reservation**

6. Connecticut Information Publication – Getting Started in Business

Connecticut's guide to understanding its taxes and compliance requirements is titled "Getting Started in Business". Copies can be obtained from the Connecticut Department of Revenue Services web site: <http://www.ct.gov/drs>.

SECTION 7

CONNECTICUT FORM Reg-1

Form REG-1 Business Taxes Registration Application

1. Reason for Filing Form REG-1 Check the applicable box:

DRS use only Connecticut Tax Registration Number

Opening a new business including but not limited to:

- a. An existing out-of-state business opening a location in Connecticut;
- b. Selling at a craft show, flea market, fair, or other venue in Connecticut or selling over the Internet; or
- c. An existing out-of-state business having employees in Connecticut (including nonresident contractors and loan-out companies).

- Opening a new location. **Enter your Connecticut Tax Registration No.:** _____
- Registering for additional taxes. **Enter your Connecticut Tax Registration No.:** _____
- Reopening a closed business.
Enter Connecticut Tax Registration No. of the closed business: _____
- Purchasing an ongoing business. The buyer of an existing business may be responsible for tax liabilities of the previous owner. See the Informational Publication on Successor Liability for Sales and Use Taxes, Admissions and Dues Tax, and Connecticut Income Tax Withholding, on the DRS website.
Enter Connecticut Tax Registration No. of the previous owner: _____
- Forming a business entity under Connecticut law or a non-Connecticut entity required to register with or to obtain a certificate of authority from the Connecticut Secretary of the State before transacting business in Connecticut.
- Establishing a passive investment company (PIC).
- Changing organization type. **Enter your current Connecticut Tax Registration No.:** _____
- Hiring household employees and intend to withhold Connecticut income tax.
- Other (explain); see *Who Needs to Complete REG-1*. _____

2. Business Information: Type of organization

- Sole proprietorship
- Single member LLC (SMLLC)
- Corporation
- General partnership
- Single member LLC taxed as a corporation
- S Corporation
- Limited liability partnership (LLP)
- Single member LLC taxed as an S corporation
- Qualified subchapter S subsidiary (QSSS)
- Limited liability company (LLC) taxed as a partnership
- Limited partnership (LP)
- Limited liability company (LLC) taxed as a corporation
- Limited liability company (LLC) taxed as an S corporation
- Limited partnership taxed as a corporation
- Other (explain): _____

3. Nature of Business Activity

Check the box(es) that best describe your business:

- Retailer
- Wholesaler
- Manufacturer
- Service provider
- Other (explain): _____

4. Major Business Activity

Describe your major business activities:

5. Business Name and Address

Organization name: Enter the name of the sole proprietor, partnership, corporation, or LLC.		Federal Employer Identification Number, if applicable
Business trade name		CT Secretary of the State Business ID No., if applicable
Business Location: Enter the physical address of the business. A post office box or rural route number is not acceptable. Home-based businesses and flea market or craft show vendors must enter a home address.		
Address line 1		Address line 2
City	State	ZIP code
Mailing address line 1 (Street or PO Box)		Address line 2
City	State	ZIP code
Business telephone number	Email address	Bank name

6. List All Owners, Partners, Corporate Officers, or LLC Members Attach a separate sheet if needed.

Name (last, first, middle initial)			Title
Home address line 1 (street)		Home address line 2	
City	State	ZIP code	Home telephone number
SSN	Date of birth	Bank name	

Name (last, first, middle initial)			Title
Home address line 1 (street)		Home address line 2	
City	State	ZIP code	Home telephone number
SSN	Date of birth	Bank name	

Name (last, first, middle initial)			Title
Home address line 1 (street)		Home address line 2	
City	State	ZIP code	Home telephone number
SSN	Date of birth	Bank name	

Name (last, first, middle initial)			Title
Home address line 1 (street)		Home address line 2	
City	State	ZIP code	Home telephone number
SSN	Date of birth	Bank name	

7. Income Tax Withholding

Are you an employer that transacts business or maintains an office in Connecticut and intends to pay wages to resident employees or nonresident employees who work in Connecticut?..... Yes No

If you have a Connecticut tax registration number for withholding for another location and intend to file withholding for this new location under that number, enter that number here: _____ and skip to Section 8; otherwise continue.

Are you an out-of-state company voluntarily registering to withhold Connecticut income tax for your Connecticut resident employees who work outside of Connecticut? Yes No

Do you intend to withhold Connecticut income tax from pension plans, annuity plans, retirement distributions, or gambling distributions? Yes No

Do you pay nonresident athletes or entertainers for services they render in Connecticut? Yes No

Do you only have household employees and wish to withhold Connecticut income tax? Yes No

Do you only have agricultural employees and wish to withhold Connecticut income tax? Yes No

If **Yes**, do you file federal Form 943, Employer's Annual Tax Return for Agricultural Employees, and wish to file **Form CT-941, Connecticut Quarterly Reconciliation of Withholding**, annually? Yes No

If you answered **Yes** to any of the income tax withholding questions, **enter the date** you will start withholding Connecticut income tax. m m d d y y

If you use a payroll service, enter the name of the payroll company: _____

8. Sales and Use Taxes

Do you sell, or will you be selling, goods in Connecticut (either wholesale or retail)? Yes No
Do you rent equipment or other tangible personal property to individuals or businesses in Connecticut? Yes No
Do you serve meals or beverages in Connecticut? Yes No
Do you provide a taxable service in Connecticut? See the Informational Publication, *Getting Started in Business, and the Special Notice on Legislative Changes Affecting the Sales and Use Taxes*, on the DRS website, for a list of taxable services. Yes No
If you answered **Yes** to any of the sales and use taxes questions, **enter the date** you will start selling or leasing goods or taxable services. m m d d y y

8a Prepaid Wireless Service E 9-1-1

Do you sell prepaid wireless service in Connecticut? Yes No
If you answered **Yes**, **enter the date** you will start to sell these in Connecticut. m m d d y y

9. Room Occupancy Tax

Do you provide lodging rooms for rent in a hotel, motel, or rooming house in Connecticut for 30 consecutive days or less? Yes No
If you answered **Yes**, **enter the date** you will start to provide rooms for rent for lodging purposes in Connecticut. m m d d y y

10. Business Entity Tax Do not complete this section if the entity is liable for the corporation business tax.

The **business entity tax** applies to all of the following business types formed under Connecticut law and to those non-Connecticut entities required to register with or obtain a certificate of authority from the Connecticut Secretary of the State before transacting business in the state, whether or not the business has registered or filed a certificate of authority, as the case may be, with the Connecticut Secretary of the State.

- S corporations (Qualified subchapter S subsidiaries (QSSS) are not liable for the business entity tax.);
- Limited liability companies (LLCs or SMLLCs) — any limited liability company that is, for federal income tax purposes, either:
- Treated as a partnership if it has two or more members; or
- Disregarded as an entity separate from its owner if it has a single member;
- Limited liability partnerships (LLPs); and
- Limited partnership (LPs).

Are you a business entity as described above? Yes No
Enter state you are organized under: Enter date of organization. m m d d y y
If not organized in Connecticut, enter the earlier of the date you started business in Connecticut or the date you registered with the Connecticut Secretary of the State. m m d d y y
Enter the month your tax year closes:

11. Corporation and Unrelated Business Income Taxes

Corporation Business Tax Do not complete this section if the entity is liable for the business entity tax.

Are you a corporation? Yes No
Are you an LLC, SMLLC, or other association taxed as a corporation? Yes No
Is this corporation exempt from federal income tax? Yes No
Have you received a determination from the Internal Revenue Services (IRS) that this corporation is exempt from federal income tax? Yes No
If **Yes**, enclose a copy of your IRS letter of determination.
Enter state you are organized under: Enter date of organization. m m d d y y
If not a Connecticut corporation, enter the earlier of the date you started business in Connecticut or the date you registered with the Connecticut Secretary of the State. m m d d y y
Enter the month the corporate year closes:

Unrelated Business Income Tax

Are you a federally exempt organization that has unrelated business income attributable to a trade or business in Connecticut? Yes No
If you answered **Yes**, **enter the date** the unrelated business income tax liability started. m m d d y y

Passive Investment Company (PIC)

Is this corporation a passive investment company as defined in Conn. Gen. Stat. §12-213(a)(27)? Yes No
Enter the date the PIC was organized. m m d d y y
Enter Connecticut tax registration number of the PIC's related financial service or insurance company:

12. Business Use Tax

If you are registered for or are registering for sales and use taxes, you do not need to complete this section.

Business use tax is due when a business purchases taxable goods or services including the purchase or lease of assets, consumable goods, and promotional items, for use in Connecticut without paying Connecticut sales tax.

Will you be purchasing taxable goods or services for use in Connecticut without paying Connecticut sales tax? Yes No

If you answered **Yes** to the business use tax question, **enter the tax liability start date.** / /

If you answered **No**, you must complete the *Business Use Tax Declaration* section below.

Business Use Tax Declaration: By registering for any of the taxes listed in this application, you have indicated to the Department of Revenue Services (DRS) that you may have a business use tax liability. Therefore, based on your application, you will be automatically registered for the business use tax unless you complete the following declaration.

I, _____ (name of taxpayer or authorized representative of taxpayer), acknowledge I have read and understand the information concerning the business use tax and declare I will not be liable for business use tax. Please initial here. _____

13. Registration Fee Schedule

Enter the registration fee amount indicated. If you are liable for either sales and use taxes or room occupancy tax, or both, as indicated in Sections 8 or 9, you must pay a \$100 registration fee. Enter the appropriate registration fee(s) from Addendum A if you are registering for the cigarette tax. You must include the total registration fee due with Form REG-1 or your registration application **will not be processed** and will be returned.

Make your check payable to: **Commissioner of Revenue Services**. If you register by mail, send Form REG-1 with your payment to: Department of Revenue Services, PO Box 2937, Hartford CT 06104-2937

Registration Fee

a. If registering for sales and use taxes or room occupancy tax , enter \$100.*	a.	
b. If registering for cigarette tax , see Addendum A.	b.	
c. Total registration fee due: Add Line a and Line b.	c.	

* No fee is required for room occupancy tax if you are registered or are registering for sales and use taxes.

14. All Applicants Must Sign the Following Declaration

I declare under penalty of law that I have examined this application and, to the best of my knowledge and belief, it is true, complete, and correct. I understand the penalty for willfully delivering a false application to DRS is a fine of not more than \$5,000, or imprisonment for not more than five years, or both.

Sign here and keep a copy for your records.	Signature of owner, partner, LLC member, or corporate officer	Date	Telephone number
	Print name of owner, partner, LLC member, or corporate officer	Title	

SECTION 8

CONNECTICUT SALES AND USE RETURN

See Form O-88, Instructions for Form OS-114 Sales and Use Tax Return, before completing.		Column 1	Column 2
Deductions		6.35% Tax Rate	7.0 % Tax Rate
15	Sales for resale - sales of goods	15	
16	Sales for resale - leases and rentals	16	
17	Sales for resale - labor and services	17	
18	All newspapers and subscription sales of magazines and puzzle magazines	18	
19	Trucks with GVW rating over 26,000 lbs. or used exclusively for carriage of interstate freight	19	
21	Food for human consumption, food sold in vending machines, items purchased with food stamps	21	
23	Sale of fuel for motor vehicles	23	
24	Sales of electricity, gas, and heating fuel for residential dwellings For Utility & Heating	24	
25	Sales of electricity - \$150 monthly charge per business Fuel Companies	25	
26	Sales of electricity, gas, and heating fuel for manufacturing or agricultural production Only	26	
27	Aviation fuel	27	
29	Tangible personal property to persons issued a Farmer Tax Exemption Permit	29	
30	Machinery, its replacement, repair, component and enhancement parts, materials, tools, and fuel for manufacturing	30	
31	Machinery, materials, tools, and equipment used in commercial printing process or publishing	31	
32	Vessels, machinery, materials, tools, and fuel for commercial fishing	32	
33	Out-of-state - sales of goods	33	
34	Out-of-state - leases and rentals	34	
35	Out-of-state - labor and services	35	
36	Motor vehicles or vessels purchased by nonresidents	36	
37	Prescription medicines and diabetic equipment - sales of goods	37	
39	Charitable or religious organizations - sales of goods	39	
40	Charitable or religious organizations - leases and rentals	40	
41	Charitable or religious organizations - labor and services	41	
42	Federal, Connecticut, or municipal agencies - sales of goods	42	
43	Federal, Connecticut, or municipal agencies - leases and rentals	43	
44	Federal, Connecticut, or municipal agencies - labor and services	44	
45	Items certified for air or water pollution abatement - sales, leases, and rentals of goods	45	
47	Nontaxable labor and services	47	
48	Services between wholly owned business entities	48	
50	Trade-ins of all like-kind tangible personal property	50	
52	Taxed goods returned within 90 days at the rate listed above in Columns 1 or 2	52	
56	Oxygen, blood plasma, prostheses, etc. - sales, leases, rentals, or repair services of goods	56	
63	Funeral expenses	63	
69	Repair services, repair and replacement parts for aircraft, and certain aircraft	69	
71	Certain machinery under the Manufacturing Recovery Act of 1992	71	
72	Machinery, equipment, tools, supplies, and fuel used in the biotechnology industry	72	
73	Repair and maintenance services and fabrication labor to vessels	73	
74	Computer and data processing services at 1% (See instructions, Form O-88.)	74	
75	Renovation and repair services to residential real property	75	
77	Sales of qualifying items to direct payment permit holders	77	
78	Sales of college textbooks	78	
79	Sales tax holiday	79	
81	Residential weatherization products and compact fluorescent light bulbs	81	
82	Motor vehicles sold to active duty nonresident members of the armed forces at 4.5%	82	
83	For cigarette dealers only : Purchases of cigarettes taxed by a stamper or distributor	83	
A	Other Adjustments - sales of goods (Describe: •)	A	
B	Other Adjustments - leases and rentals (Describe: •)	B	
C	Other Adjustments - labor and services (Describe: •)	C	
Total Deductions: Enter here and on Line 8 on the front of this return.		•	•

SECTION 9

**CONNECTICUT DRS SALES TAX RULING
2002-3**

Connecticut Department of Revenue Services



25 Sigourney Street
Hartford CT 06106-5032

STATE OF CONNECTICUT DEPARTMENT OF REVENUE SERVICES

Ruling 2002-3

Sales and Use Tax Admissions Tax Motor Vehicle Fuels Tax Application to a Federally Recognized Indian Tribe Located in Connecticut

FACTS:

A federally recognized Indian tribe (hereinafter the "Tribe") located in Connecticut has inquired as to the appropriate tax [i] treatment of a variety of transactions to which the Tribe is a party. [ii] These transactions take place either within or outside of "Indian country of the Tribe." [iii]

ISSUES:

1. Whether sales by the Tribe within Indian country of the Tribe of tangible personal property not produced within Indian country of the Tribe to other than enrolled members of the Tribe are subject to Connecticut sales tax.
2. Whether sales by the Tribe within Indian country of the Tribe of tangible personal property to enrolled members of the Tribe are subject to Connecticut sales or use tax.
3. Whether sales by the Tribe of meals that are prepared and served within Indian country of the Tribe are subject to Connecticut sales tax.
4. Whether sales by the Tribe of lodging (i.e., rooms or other accommodations) located within Indian country of the Tribe are subject to Connecticut sales tax.
5. Whether sales by the Tribe of entertainment that is produced within Indian country of the Tribe, including when the Tribe contracts to have a third party produce an entertainment event at facilities developed and operated by the Tribe within Indian country of the Tribe, are subject to Connecticut admissions tax.
6. Whether tangible personal property or services (including food, non-alcoholic beverages or lodging) given by the Tribe within Indian country of the Tribe to patrons of the Tribe as gifts, prizes or as complimentary or partially complimentary privileges are subject to Connecticut sales or use tax.
7. Whether purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe within Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe within Indian country of the Tribe are subject to Connecticut sales or use tax.

tax.

8. Whether purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe outside of Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe outside of Indian country of the Tribe are subject to Connecticut sales or use tax if such tangible personal property is ultimately used within Indian country of the Tribe.
9. Whether purchases by the Tribe of motor vehicles where title to the motor vehicles passes to the Tribe within Indian country of the Tribe or leases by the Tribe of motor vehicles where delivery of the motor vehicles is made to the Tribe within Indian country of the Tribe are subject to Connecticut sales tax.
10. Whether purchases by the Tribe of enumerated services wherever performed, if the benefit of such services is realized by the Tribe, are subject to Connecticut sales or use tax.
11. Whether purchases of tangible personal property outside of Indian country of the Tribe by contractors or subcontractors of the Tribe for use in projects for the Tribe within Indian country of the Tribe are subject to Connecticut sales or use tax.
12. Whether sales by the Tribe outside of Indian country of the Tribe of tangible personal property and services, including lodging and entertainment, are subject to Connecticut sales, use or admissions tax.
13. Whether fuel delivered to the Tribe within Indian country of the Tribe is subject to Connecticut motor vehicles fuels tax (and any other related tax) when the fuel is used in tribally owned or leased motor vehicles that are garaged within Indian country of the Tribe and are either (1) specially-equipped or (2) dedicated exclusively to an essential governmental purpose (other than gaming).

RULINGS:

1. Sales by the Tribe within Indian country of the Tribe of tangible personal property not produced within Indian country of the Tribe to other than enrolled members of the Tribe are subject to Connecticut sales tax and the Tribe, as a retailer, must collect and remit such tax to the State.
2. Sales by the Tribe within Indian country of the Tribe of tangible personal property to enrolled members of the Tribe are not subject to Connecticut sales tax. However, purchases by an enrolled member of the Tribe within Indian country of the Tribe will be subject to use tax if the enrolled member purchases the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses its.
3. Sales by the Tribe of meals that are prepared and served within Indian country of the Tribe are not subject to Connecticut sales tax because the value of the meals is generated within Indian country of the Tribe **[iv]**.
4. Sales by the Tribe of lodging (i.e., rooms or other accommodations) located within Indian country of the Tribe are not subject to Connecticut sales tax because the value of the lodging is generated within Indian country of the Tribe.
5. Sales by the Tribe of entertainment that is produced within Indian country of the Tribe, including when the Tribe contracts to have a third party produce an entertainment event at facilities developed and operated by the Tribe within Indian country of the Tribe, are not subject to Connecticut admissions tax.
6. Tangible personal property or services (including food, non-alcoholic beverages or lodging) given by the Tribe within Indian country of the Tribe to patrons of the Tribe as gifts, prizes or as complimentary privileges are not subject to Connecticut use tax because the burden

of the use tax falls directly on the Tribe. However, to the extent such tangible personal property or services are given by the Tribe to patrons of the Tribe on a partially complimentary basis, the consideration received by the Tribe for the non-complimentary portion of the tangible personal property or services will be subject to Connecticut sales tax as provided herein.

7. Purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe within Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe within Indian country of the Tribe are not subject to Connecticut sales tax. However, such purchases or rentals will be subject to Connecticut use tax if the Tribe purchases or rents the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses it.
8. Purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe outside of Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe outside of Indian country of the Tribe are not subject to Connecticut sales or use tax provided the Tribe complies with the provisions of Conn. Gen. Stat. §§12-407(6) or 12-408c and the tangible personal property is ultimately used solely within Indian country of the Tribe.
9. Purchases by the Tribe of motor vehicles where title to the motor vehicles passes to the Tribe within Indian country of the Tribe or leases by the Tribe of motor vehicles where delivery of the motor vehicles is made to the Tribe within Indian country of the Tribe are not subject to Connecticut sales tax.
10. Purchases by the Tribe of enumerated services wherever performed, if the benefit of the services is realized by the Tribe, are not subject to Connecticut sales or use tax unless such services are to real or tangible personal property located outside of Indian country of the Tribe or to property intended to be used outside of Indian country of the Tribe.
11. Purchases of tangible personal property outside of Indian country of the Tribe by contractors or subcontractors of the Tribe for use in projects for the Tribe within Indian country of the Tribe are not subject to Connecticut sales or use tax provided the contractors or subcontractors comply with the provisions of Conn. Gen. Stat. §§12-407(6) or 12-408c.
12. Sales by the Tribe outside of Indian country of the Tribe of tangible personal property and services, including lodging and entertainment, are subject to Connecticut sales, use or admissions tax.
13. Fuel delivered to the Tribe within Indian country of the Tribe is not subject to Connecticut motor vehicle fuels tax or to Connecticut sales tax provided the fuel is used in tribally owned or leased motor vehicles that are garaged within Indian country of the Tribe and are either (1) specially-equipped or (2) dedicated exclusively to an essential governmental purpose (other than gaming).

DISCUSSION:

The United States Supreme Court has consistently ruled that states are without power to tax Indian reservations and the Indians on them without clear congressional authorization to do so. "[A]bsent cession of jurisdiction or other federal statutes permitting it . . . a state is without power to tax reservation lands and reservation Indians." **Oklahoma Tax Commission v. Chickasaw Nation**, 515 U.S. 450, 458 (1995) (quoting **County of Yakima v. Confederated Tribes and Bands of Yakima Nation**, 502 U.S. 251, 258 (1992) (citation omitted)). This general rule is even stronger when dealing with state jurisdiction to tax. "In the special area of state taxation of Indian tribes . . . the [Court] has adopted a per se rule" against state jurisdiction. **California v. Cabazon Band of Mission Indians**, 480 U.S. 202, 215 n. 17 (1987). Application of this per se or "categorical" rule to situations where a state is attempting to

levy a tax on an Indian tribe depends, however, on where the legal incidence of the state tax falls. **Oklahoma Tax Commission v. Chickasaw Nation**, at 458. Thus, "[t]he initial and frequently dispositive question in Indian tax cases . . . is who bears the legal incidence of the tax." *Id.*

According to the United States Supreme Court:

If the legal incidence of an excise tax rests on a tribe . . . for sales made inside Indian country, the tax cannot be enforced absent clear congressional authorization. But if the legal incidence of the tax rests on non-Indians, no categorical bar prevents the enforcement of the tax . . . and . . . the State may impose its levy

Id. at 459. Therefore, a determination of where the legal incidence of a state tax falls will dictate whether application of such tax will be categorically barred or whether a court will apply a federal preemption test [v] and balance the respective state, federal and tribal interests. Consequently, for purposes of this Ruling, it must first be determined where the legal incidences of the Connecticut sales and use, admissions and motor vehicle fuels taxes fall.

The Connecticut sales tax is imposed on retailers of tangible personal property or enumerated services for the privilege of making taxable sales in Connecticut. **See** Conn. Gen. Stat. §12-408 (1). Although Connecticut law requires retailers to collect and remit the sales tax, Connecticut law provides that retailers must collect reimbursement for the tax from consumers (hereinafter "purchasers"). **See** Conn. Gen. Stat. §12-408(2). In determining where the legal incidence of a tax falls, the United States Supreme Court in **Oklahoma Tax Commission v. Chickasaw Nation** held that the "legal incidence" of a tax falls on the party to which, under the taxing statute, the tax burden is ultimately passed on, even if the tax is to be charged and collected by another person making the sale to such party. **Oklahoma Tax Commission v. Chickasaw Nation**, at 457-462. Under this analysis, the legal incidence of the Connecticut sales tax clearly falls on purchasers, not retailers.

The corollary to the sales tax is the use tax. [vi] The use tax is imposed "on the storage, acceptance, consumption or any other use in this state of tangible personal property purchased from any retailer for storage, acceptance, consumption or any other use in this state" Conn. Gen. Stat. §12-411(1). Although certain retailers [vii] may be required to collect the use tax from purchasers, liability for the use tax rests ultimately with the purchasers. Therefore, under the holding in **Oklahoma Tax Commission v. Chickasaw Nation**, in those situations where state law requires purchasers to self-assess and remit the use tax, the burden of the use tax falls exclusively on the purchasers. Thus, like the Connecticut sales tax, the legal incidence of the Connecticut use tax falls on purchasers, not retailers.

Subject to certain exemptions, Conn. Gen. Stat. §12-541 imposes a ten percent tax on the admission charge to any place of amusement, entertainment or recreation. Places of amusement, entertainment or recreation include, but are not limited to, theaters, motion picture shows, auditoriums where lectures and concerts are given, amusement parks, fairgrounds, race tracks, dance halls, ball parks, stadiums, amphitheaters, convention centers, golf courses, miniature golf courses, tennis courts, skating rinks, swimming pools, bathing beaches, gymnasiums, auto shows, boat shows, camping shows, home shows, dog shows and antique shows. **See** Conn. Gen. Stat. §12-540(3). Under Connecticut law, the admissions tax is imposed upon the person making the admission charge. **See** Conn. Gen. Stat. §12-541(b). Like the sales tax, however, Connecticut law provides that the person making the admissions charge must collect reimbursement for the tax from the purchaser. **Id.** Therefore, under the holding in **Oklahoma Tax Commission v. Chickasaw Nation**, the legal incidence of the Connecticut admissions tax falls on purchasers, not on persons making the admissions charges.

The Connecticut motor vehicle fuels tax is an excise tax imposed on distributors, as that term is defined in Conn. Gen. Stat. §12-455a(a). Distributors pay motor vehicle fuels tax to the State of Connecticut "for the account of the purchaser or consumer." Conn. Gen. Stat. §12-458(a)(2). In

addressing the application of the motor vehicle fuels tax, the Connecticut Supreme Court has determined that "the plain intent of the legislature was to impose the burden of the [motor vehicle fuels] tax upon the motor vehicle fuel purchaser or user, and to make the distributor responsible only for its collection and payment." **Wesson, Inc. v. Hychko**, 205 Conn. 51, 55-56, 529 A.2d 714, 716 (1987). Therefore, in light of the Connecticut Supreme Court's holding in **Wesson, Inc. v. Hychko** and in accordance with the United States Supreme Court's holding in **Oklahoma Tax Commission v. Chickasaw Nation**, the burden of the motor vehicle fuels tax falls on purchasers, not distributors.

Applying this analysis to the facts of this Ruling, the Department has determined that, in the following situations, the legal incidence of the tax falls on the Tribe and, as such, recognizes that the application of the tax is categorically barred. These issues are discussed below with reference to their Ruling number.

2. Sales by the Tribe within Indian country of the Tribe of tangible personal property to enrolled members of the Tribe are not subject to sales tax. However, purchases by an enrolled member of the Tribe within Indian country of the Tribe will be subject to use tax if the enrolled member purchases the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses it.

In this situation, the legal incidence of the Connecticut sales tax falls on enrolled members of the Tribe who are making purchases within Indian country of the Tribe. Although this Ruling does not apply to transactions involving enrolled members of the Tribe, the Department has long recognized that "[w]hen the legal incidence of [a] tax is found to be on a tribe or its members for a sale within Indian country, state taxation of the transaction is categorically prohibited." Ruling No. 95-11 at p. 4. Ruling No. 95-11 also stated, however, that "purchases made by the Tribe or its members in Indian country may be subsequently subject to use tax if the property is intended to be used in Connecticut outside of Indian country at the time of sale and then is so used." *Id.* at p. 3. Therefore, consistent with Ruling No. 95-11 and in accordance with established principles of federal Indian law, sales made by the Tribe within Indian country of the Tribe of tangible personal property to enrolled members of the Tribe are not subject to sales tax, but purchases by an enrolled member of the Tribe within Indian country of the Tribe will be subject to use tax if the enrolled member purchases the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses it.

6. Tangible personal property or services (including food, non-alcoholic beverages or lodging) given by the Tribe within Indian country of the Tribe to patrons of the Tribe as gifts, prizes or as complimentary privileges are not subject to Connecticut use tax because the burden of the use tax falls directly on the Tribe. However, to the extent such tangible personal property or services are given by the Tribe to patrons of the Tribe on a partially complimentary basis, the consideration received by the Tribe for the non-complimentary portion of the tangible personal property or services will be subject to Connecticut sales tax as provided herein.

In this situation, the Tribe is giving away goods and services within Indian country of the Tribe to patrons [viii] of the Tribe and is not being reimbursed for such tangible personal property or services. By distributing tangible personal property and services on a fully complimentary basis, the Tribe, under Connecticut law, is making a taxable use of the tangible personal property and services and as such is liable for use tax on the purchase price of the tangible personal property or the retail value of the services. Because the legal incidence of the use tax falls on the Tribe, however, the tax is categorically barred. On the other hand, when the Tribe distributes tangible personal property or services on a partially complimentary basis, the Tribe makes a taxable use of only a portion of the tangible personal property or services and is the retailer of the non-complimentary portion of such tangible personal property or services. Consequently, because the legal incidence of the sales tax, with respect to the non-complimentary portion of the tangible personal property and services, falls on purchasers, not retailers, the consideration received by the Tribe for the tangible personal property or services will be subject to the sales tax as provided herein.

7. Purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe within Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe within Indian country of the Tribe are not subject to Connecticut sales tax. However, such purchases or rentals will be subject to Connecticut use tax if the Tribe purchases or rents the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses it.

As discussed above, the legal incidence of the sales tax falls on purchasers. Here, not only is the Tribe the purchaser but the transactions take place within Indian country of the Tribe. In such situations, the Department has long recognized that "[w]hen the legal incidence of [a] tax is found to be on a tribe or its members for a sale within Indian country, state taxation of the transaction is categorically prohibited." Ruling No. 95-11 at p. 4. Accordingly, because the legal incidence of the sales tax falls on the Tribe when it purchases tangible personal property where title to the tangible personal property passes to the Tribe within Indian country of the Tribe or when it rents tangible personal property where delivery of the tangible personal property is made to the Tribe within Indian country of the Tribe, the tax is barred. However, Ruling No. 95-11 also stated that "purchases made by the Tribe or its members in Indian country may be subsequently subject to use tax if the property is intended to be used in Connecticut outside of Indian country at the time of sale and then is so used." *Id.* at p. 3. Likewise, with regard to rentals of tangible personal property where delivery of the tangible personal property takes place within Indian country of the Tribe, Ruling No. 95-11 stated that "[s]uch rentals will not be subject to use tax as long as the Tribe or its members do not rent the property with the intent to use it outside of Indian country and then so use it." *Id.* at p. 4. Therefore, consistent with Ruling No. 95-11 and in accordance with established principles of federal Indian law, purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe within Indian country of the Tribe or rentals by the Tribe of tangible personal property where delivery of the tangible personal property is made to the Tribe within Indian country of the Tribe will be subject to use tax if the Tribe purchases or rents the tangible personal property with the intention of using it outside of Indian country of the Tribe and actually so uses it.

9. Purchases by the Tribe of motor vehicles where title to the motor vehicles passes to the Tribe within Indian country of the Tribe or leases by the Tribe of motor vehicles where delivery of the motor vehicles is made to the Tribe within Indian country of the Tribe are not subject to Connecticut sales tax.

As discussed above, the legal incidence of the sales tax falls on purchasers. Here, not only is the Tribe the purchaser but the transactions take place within Indian country of the Tribe. In such situations, the Department has long recognized that "[w]hen the legal incidence of [a] tax is found to be on a tribe or its members for a sale within Indian country, state taxation of the transaction is categorically prohibited." *Id.* Accordingly, because the legal incidence of the sales tax falls on the Tribe when it purchases motor vehicles where title to the vehicles passes to the Tribe within Indian country of the Tribe or when it leases motor vehicles where delivery of the vehicles is made to the Tribe within Indian country of the Tribe, the tax is barred.

10. Purchases by the Tribe of enumerated services wherever performed, if the benefit of the services is realized by the Tribe, are not subject to Connecticut sales tax unless such services are to real or tangible personal property located outside of Indian country of the Tribe or to property intended to be used outside of Indian country of the Tribe.

In Connecticut, taxable services are generally enumerated in Conn. Gen. Stat. §12-407(2)(i). These enumerated services fall into three categories: services to real property, services to tangible personal property and "other" services. The Sales and Uses Taxes Act, Conn. Gen. Stat. §12-406 et seq., generally imposes sales and use taxes on these services only when some benefit or use of the service is realized in Connecticut. When applying this general rule to services to real and tangible personal property, [ix] the benefit of such services is considered to be realized at the location of the property. Therefore, if the real or tangible personal property is located in Indian country of the Tribe, the benefit of the services to the property is realized by the Tribe within Indian country of the Tribe and, because the legal incidence of the tax falls on the Tribe

within Indian country of the Tribe, the tax on the services must fall. However, if the intended use of the property is outside of Indian country of the Tribe or if the property to which the services are performed is located outside of Indian country of the Tribe, the services, although received by the Tribe, are realized outside of Indian country of the Tribe and therefore are subject to Connecticut sales or use tax.

Unlike services to real or tangible personal property, the benefit of "other" services [x] often is realized at a location other than where the services are performed. For purposes of this ruling, services purchased by the Tribe in connection with the operation of its Tribal government may be performed outside of Indian country of the Tribe. However, regardless of where performed, the Department recognizes that services purchased by the Tribe in connection with the operation of its Tribal government are realized by the Tribe at the seat of its Tribal government (i.e., within Indian country of the Tribe). Therefore, because the benefit of these services, like the services to real and tangible personal property located within Indian country of the Tribe, are realized by the Tribe within Indian country of the Tribe and the legal incidence of the tax falls on the Tribe within Indian country of the Tribe, the tax on such services must fall.

13. Fuel delivered to the Tribe within Indian country of the Tribe is not subject to Connecticut motor vehicle fuels tax or to Connecticut sales tax provided the fuel is used in tribally owned or leased motor vehicles that are garaged within Indian country of the Tribe and are either (1) specially-equipped or (2) dedicated exclusively to an essential governmental purpose (other than gaming).

In light of Conn. Gen. Stat. §12-458(a)(2) and the Connecticut Supreme Court's holding in **Wesson, Inc. v. Hychko**, 205 Conn. 51, 529 A.2d 714 (1987), it is clear that the burden of the motor vehicle fuels tax falls on purchasers, not distributors. In this case the Tribe is purchasing motor vehicle fuel. Furthermore, the fuel is being delivered to the Tribe within Indian country of the Tribe. In such situations, the Department has long recognized that "[w]hen the legal incidence of [a] tax is found to be on a tribe or its members for a sale within Indian country, state taxation of the transaction is categorically prohibited." Ruling No. 95-11 at p. 4. Accordingly, because the legal incidence of the motor vehicle fuels tax falls on the Tribe when it purchases fuel that is delivered to the Tribe within Indian country of the Tribe and used in tribally owned or leased motor vehicles that are garaged within Indian country of the Tribe and are either (1) specially-equipped or (2) dedicated exclusively to an essential governmental purpose (other than gaming), the tax is barred.

Conn. Gen. Stat. §12-412(15) provides an exemption from sales tax for motor vehicle fuel. Conn. Gen. Stat. §12-412(15), in pertinent part, exempts "[s]ales of and the storage, use or other consumption in this state of motor vehicle fuel (A) for use in any motor vehicle licensed or required to be licensed to operate upon the public highways of this state, whether or not the [motor vehicle fuels tax] has been paid on such fuel." Therefore, any fuel that is purchased by the Tribe and used in motor vehicles that are "licensed or required to be licensed to operate upon the public highways" of Connecticut will be exempt from sales tax pursuant to Conn. Gen. Stat. §12-412(15).

With respect to four of the remaining issues addressed by this Ruling, the Department has determined that the legal incidence of the tax in those situations does not fall on the Tribe. Accordingly, the determination of the proper tax treatment requires a balancing of the respective state, federal and tribal interests. These issues are discussed below with reference to their Ruling number.

1. Sales by the Tribe within Indian country of the Tribe of tangible personal property not produced within Indian country of the Tribe to other than enrolled members of the Tribe are subject to Connecticut sales tax and the Tribe, as a retailer, must collect and remit such tax to the State.

As discussed previously, "[t]he initial and frequently dispositive question in Indian tax cases . . . is who bears the legal incidence of the tax." **Oklahoma Tax Commission v. Chickasaw Nation**, at 458. In this situation, the Tribe is the retailer, not the purchaser. Therefore, having determined that the legal incidence of the sales tax falls on purchasers, not retailers, the burden

of the sales tax in this situation does not fall on the Tribe and, thus, is not categorically barred. Therefore, the Department must balance the respective state, federal and tribal interests to determine whether the sales tax will apply in this situation.

When balancing the respective state, federal and tribal interests, the Department recognizes that it must find that the State's interest in imposing its tax outweighs the Tribe's and the federal government's interest in tribal self-government in order to impose the tax. To this end, the United States Supreme Court has stated:

While the Tribes do have an interest in raising revenues for essential governmental programs, that interest is strongest when the revenues are derived from value generated on the reservation by activities involving the Tribes and when the taxpayer is the recipient of tribal services. The State also has a legitimate governmental interest in raising revenues, and that interest is strongest when the tax is directed at off-reservation value and when the taxpayer is the recipient of state services.

Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134, 156-57 (1980). Thus, it appears that tribal interests will be considered strongest when the transactions being taxed are connected to or derived from Indian country or from tribal resources or services. In contrast, tribal interests will be less substantial where the tribe simply imports a finished product into Indian country and resells it to non-tribal members for use outside of Indian country.

In several United States Supreme Court cases involving state taxation of retail sales of cigarettes by a tribe, where tribal retailers sold to non-tribal purchasers, the legal incidence of the sales tax fell on the non-tribal purchasers, and the products sold were manufactured outside of Indian country, state sales taxes have been deemed valid. **Washington v. Confederated Tribes of the Colville Indian Reservation**, 447 U.S. at 155-57; **Moe v. Confederated Salish and Kootenai Tribes of the Flathead Reservation**, 425 U.S. 463, 482-83 (1976). According to the United States Supreme Court, where the tribe is simply "marketing an exemption from state taxation to persons who would normally do their business elsewhere," and the value is not generated on the reservation, the sales tax will be upheld. **Washington v. Confederated Tribes of the Colville Indian Reservation**, 447 U.S. at 155.

This analysis has been applied by several federal circuit courts in the context of retail sales of other tangible personal property within Indian country. **Yavapai-Prescott Indian Tribe v. Scott**, 117 F.3d 1107, 1112 (9th Cir. 1997), **cert. denied**, 522 U.S. 1076 (1998) (room rentals and food and beverage); **Gila River Indian Community v. Waddell**, 91 F.3d 1232, 1236 (9th Cir. 1996) (tickets and concessionary items); **Salt River Pima-Maricopa Indian Community v. Arizona**, 50 F.3d 734, 736 (9th Cir. 1995), **cert. denied**, 516 U.S. 868 (1995) (retail goods at shopping mall); and **Indian Country U.S.A., Inc. v. Oklahoma**, 829 F.2d 967, 984, 986-87 (10th Cir. 1987) (sales tax on bingo activities). In each of these cases, the courts focused on the tribe's role and contribution to the value of the tangible personal property purchased and sold within Indian country.

In light of the United States Supreme Court cigarette tax cases and the application and interpretation of those cases by several federal circuit courts, the Department recognizes that if the tangible personal property being sold by a tribe to non-tribal members within Indian country of a tribe is produced and consumed within Indian country of the tribe, the state tax will be preempted. However, if the tangible personal property is simply imported into Indian country of a tribe and sold for off-reservation use, and the tribe has only minimal involvement, the Department recognizes that the state has a legitimate governmental interest in taxing such tangible personal property and, as a result, the tribe must collect and remit the tax on the tangible personal property sold.

In this situation, the Tribe is making retail sales of tangible personal property within Indian country of the Tribe to non-tribal members. Therefore, as explained previously, the burden of the sales tax does not fall on the Tribe. Rather, the legal incidence of the sales tax falls directly on the non-tribal members who are making purchases within Indian country of the Tribe.

Furthermore, the tangible personal property being sold by the Tribe is not produced within Indian country of the Tribe. The tangible personal property is simply being imported into Indian country of the Tribe and is being resold to non-tribal members for use outside of Indian country of the Tribe. Consequently, after balancing the respective state, federal and tribal interests involved, it is clear that the Tribe has added minimal value, if it added any value at all, to the tangible personal property and the State's tax is "directed at off-reservation value." **Washington v. Confederated Tribes of the Colville Indian Reservation**, 447 U.S. at 156-57. Therefore, consistent with the United States Supreme Court cigarette tax cases and the application and interpretation of those cases by several federal circuit courts, the sales tax will apply to these transactions.

3. **Sales by the Tribe of meals that are prepared and served within Indian country of the Tribe are not subject to Connecticut sales tax because the value of the meals is generated within Indian country of the Tribe.**
4. **Sales by the Tribe of lodging (i.e., rooms or other accommodations) located within Indian country of the Tribe are not subject to Connecticut sales tax because the value of the lodging is generated within Indian country of the Tribe.**

In both of these situations, the Department must again balance the state, federal and tribal interests involved to determine whether the Connecticut sales tax will apply. As previously explained, when balancing the respective state, federal and tribal interests the Department must make a "particularized inquiry into the nature of the state, federal, and tribal interests at stake" and recognizes that it must find that the State's interest in imposing its tax outweighs the Tribe's and the federal government's interest in tribal self-government in order to impose the tax. **White Mountain Apache Tribe v. Bracker**, 448 U. S. 136, 145 (1980). Relying on the United States Supreme Court cigarette tax cases and the application and interpretation of those cases by several federal circuit courts, the Department, in undertaking the balancing, must apply the following principles: if the tangible personal property being sold by a tribe to non-tribal members within Indian country of a tribe is produced and consumed within Indian country of the tribe, the state tax will be preempted. However, if the tangible personal property is simply imported into Indian country of a tribe and sold for off-reservation use, and the tribe has only minimal involvement, the state will have a legitimate governmental interest in taxing such tangible personal property and, as a result, the tribe must collect and remit the tax on the tangible personal property sold.

Although the legal incidence of the tax in both of these situations (i.e., the sales of meals [xi] and lodging) falls directly on the purchasers, the value of the meals and lodging being sold by the Tribe is being produced and consumed within Indian country of the Tribe. Moreover, the Tribe is heavily involved in the production of the meals and lodging and this involvement significantly contributes to the value of the meals and lodging. Most notably, the Tribe built, owns and operates all the restaurants at which the meals are served and all the facilities where lodging is provided, tribal employees prepare and serve all meals and the Tribe regulates food inspections and workplace and occupational safety. Accordingly, the Department recognizes that a substantial portion of the value of the meals and lodging is being generated within Indian country of the Tribe and that the Tribe is heavily involved in and contributes to the generation of that value. Therefore, when balancing the respective state, federal and tribal interests involved, it has been determined that the Tribe's interests outweigh the State's interests. Consequently, sales of meals and lodging by the Tribe within Indian country of the Tribe will not be subject to Connecticut sales tax. [xii]

12. **Sales by the Tribe outside of Indian country of the Tribe of tangible personal property and services, including lodging and entertainment, are subject to Connecticut sales, use or admissions tax.**

In this situation, the Tribe is making sales of tangible personal property and services outside of Indian country of the Tribe. The general rule in these situations is that such activities will be subject to nondiscriminatory state taxes. **Mescalero Apache Tribe v. Jones**, 411 U.S. 145, 148 (1973). In **Mescalero Apache Tribe v. Jones**, the United States Supreme Court upheld a gross

receipts tax on an off-reservation ski resort business wholly owned by a tribe, stating: "Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State." **Id.** at 148-49. The Department recognized this general principle in Ruling No. 95-11:

Indian tribes and their members, unlike the governments of the State of Connecticut or the United States, do not enjoy exemption and/or constitutional immunity from state taxation wherever in Connecticut they happen to be when otherwise taxable sales are made. Instead, the exemption from sales tax depends both on the identity of the purchasers (Indian tribes and their members) and where the sales to them take place (within Indian country). Implicit in the Supreme Court's bright-line test in **Chickasaw Nation** is the recognition that when Indians are on their own federally-recognized land they are generally beyond the jurisdictional reach of the states within which they are situated; but the land itself, without the tribe, and the Indians themselves, without the land, are not necessarily beyond the states' reach. Thus when title to tangible personal property is transferred to a tribe or its members at a Connecticut location outside of Indian country . . . the imposition of sales tax on such transaction is not federally preempted.

Ruling No. 95-11 at p. 2. Therefore, in light of the United States Supreme Court's holding in **Mescalero Apache Tribe v. Jones**, sales by the Tribe outside of Indian country of the Tribe of tangible personal property and services, including lodging and entertainment, are subject to sales, use or admissions tax.

However, as noted previously, there are exemptions to the admissions tax. **See** Conn. Gen. Stat. §12-541(a). One such exemption is Conn. Gen. Stat. §12-541(a)(3), which exempts charges "to any event . . . all of the proceeds from which inure exclusively to an entity which is exempt from federal income tax under the Internal Revenue Code, provided such entity actively engages in and assumes the financial risk associated with the presentation of such event." Because the Tribe is an entity that is exempt from federal income tax, [xiii] any sales of entertainment made by the Tribe, whether such sales are made within or outside of Indian country of the Tribe, will be exempt provided the financial benefits and the risk of the event inure to the Tribe.

With respect to the remaining issues addressed in this Ruling, the Department need not make a determination as to where the legal incidence of the tax falls. These remaining issues are discussed below and make reference to their Ruling number.

5. Sales by the Tribe of entertainment that is produced within Indian country of the Tribe, including when the Tribe contracts to have a third party produce an entertainment event at facilities developed and operated by the Tribe within Indian country of the Tribe, are not subject to Connecticut admissions tax.

As stated previously, the Tribe is an entity that is exempt from federal income tax. Consequently, any sales of entertainment made by the Tribe, whether such sales are made within or outside of Indian country of the Tribe, will be exempt from the Connecticut admissions tax provided the financial benefits and the risk of the event inure to the Tribe. **See** Conn. Gen. Stat. §12-541(a)(3).

8. Purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe outside of Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe outside of Indian country of the Tribe are not subject to Connecticut sales or use tax provided the Tribe complies with the provisions of Conn. Gen. Stat. §§12-407(6) or 12-408c and the tangible personal property is ultimately used solely within Indian country of the Tribe.

In this situation, the Tribe is making purchases [xiv] of tangible personal property outside Indian country of the Tribe. Just as when the Tribe is making sales of tangible personal property or services outside of Indian country, the general rule in these situations is that such

activities will be subject to nondiscriminatory state taxes. **Mescalero Apache Tribe v. Jones**, 411 U.S. 145, 148. Consequently, in light of **Mescalero Apache Tribe v. Jones**, purchases of tangible personal property by the Tribe where title to the tangible personal property passes to the Tribe outside of Indian country of the Tribe or rentals of tangible personal property by the Tribe where delivery of the tangible personal property is made to the Tribe outside of Indian country of the Tribe will be subject to tax in Connecticut. However, provided the Tribe complies with the provisions of Conn. Gen. Stat. §12-407(6) or Conn. Gen. Stat. §12-408c, the Tribe may avail itself of these specific exclusions and the transactions will not be subject to tax.

Conn. Gen. Stat. §12-407(6) excludes from the definition of "storage" and "use"

keeping, retaining or exercising any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

For purposes of Conn. Gen. Stat. §12-407(6), the Department considers Indian country of the Tribe to be "outside" of Connecticut. Therefore, if the Tribe purchases or rents tangible personal property from outside Connecticut, keeps or retains the property in Connecticut and subsequently transports the property into Indian country of the Tribe for use solely within Indian country of the Tribe, the Connecticut use tax does not apply.

Similar to Conn. Gen. Stat. §12-407(6) is Conn. Gen. Stat. §12-408c, which is also known as The "Buy Connecticut" Provision. **See Special Notice 2001(5)**, *The "Buy Connecticut" Provision*. Conn. Gen. Stat. §12-408c allows taxpayers carrying on a trade, occupation, business or profession in Connecticut to request refunds of sales and use taxes paid on tangible personal property that is purchased from Connecticut retailers and is eventually shipped out of Connecticut for exclusive use outside Connecticut. See Conn. Gen. Stat. §12-408c(a). It also allows the Commissioner of Revenue Services to issue permits that enable qualified purchasers to purchase such property without payment of the sales and use taxes otherwise imposed by Chapter 219 of the Connecticut General Statutes. **See** Conn. Gen. Stat. §12-408c(b).

To satisfy the statutory requirements of Conn. Gen. Stat. §12-408c, the tangible personal property must be purchased from Connecticut retailers and subsequently shipped [xv] outside of Connecticut for use solely outside of Connecticut. As with Conn. Gen. Stat. §12-407(6), the Department considers Indian country of the Tribe to be outside of Connecticut for purposes of both the refund and exemption permit portions of Conn. Gen. Stat. §12-408c. **See Special Notice 2001(5)** at p. 4. Therefore, if, in accordance with Conn. Gen. Stat. §12-408c(b), the Tribe is issued a permit by the Department, it may purchase or rent tangible personal property from a Connecticut retailer exempt from sales or use tax and keep or retain the property in Connecticut, provided it eventually ships the property into Indian country of the Tribe for use solely within Indian country of the Tribe. If the Department does not issue the Tribe a permit, the Tribe may utilize the refund portion of Conn. Gen. Stat. §12-408c and file a claim for refund of the sales or use tax it paid on such property.

11. Purchases of tangible personal property outside of Indian country of the Tribe by contractors or subcontractors of the Tribe for use in projects for the Tribe within Indian country of the Tribe are not subject to Connecticut sales or use tax provided the contractors or subcontractors comply with the provisions of Conn. Gen. Stat. §§12-407(6) or 12-408c.

This issue was addressed by Ruling No. 95-11, which held that "[w]hen title to tangible personal property passes outside of Indian country or delivery of rented property is taken outside of Indian country, such sales or rentals are subject to sales and use taxes, whether made directly to the

Tribe or to a contractor." Ruling No. 95-11 at p. 6. After the issuance of Ruling No. 95-11, however, the Connecticut General Assembly enacted Conn. Gen. Stat. §12-408c. See 1997 Conn. Pub. Acts 243, §48. As explained previously, the Department, in administering this provision, has recognized Indian country of the Tribe to be outside of Connecticut for purposes of Conn. Gen. Stat. §12-408c. See **Special Notice 2001(5)** at p. 4. Given the fact that the language of Conn. Gen. Stat. §12-408c is nearly identical to the language of Conn. Gen. Stat. §12-407(6), the Department has likewise recognized Indian country of the Tribe to be outside of Connecticut for purposes of Conn. Gen. Stat. §12-407(6).

Consequently, tangible personal property purchased by contractors or subcontractors of the Tribe outside Connecticut that is brought into Connecticut and subsequently shipped into Indian country of the Tribe for use solely within Indian country of the Tribe is not subject to use tax. See Conn. Gen. Stat. §12-407(6). Similarly, contractors or subcontractors of the Tribe which, in accordance with Conn. Gen. Stat. §12-408c(b), are issued a permit by the Department, may purchase or rent tangible personal property from a Connecticut retailer exempt from sales or use tax and keep or retain the property in Connecticut, provided they eventually ship the property into Indian country of the Tribe for use solely within Indian country of the Tribe. If the Department does not issue a contractor or subcontractor of the Tribe a permit, the contractor or subcontractor may utilize the refund portion of Conn. Gen. Stat. §12-408c and file a claim for refund of the sales or use tax if paid on such property.

ENDNOTES

[i] All references to "tax" in this ruling are to Connecticut State taxes under Title 12 of the Connecticut General Statutes.

[ii] This ruling does not address and, therefore, does not apply to transactions involving retail tenants of the Tribe or to transactions involving enrolled members of the Tribe.

[iii] The term "Indian country" is defined in 18 U.S.C. §1151. For purposes of this ruling, the Department has determined that Indian country of the Tribe means only that land that has been taken into trust by the United States for the benefit of the Tribe.

[iv] All references in this ruling to meals include non-alcoholic beverages.

[v] The United States Supreme Court has recognized that Congress has broad power to regulate tribal affairs under the Indian Commerce Clause of the United States Constitution. **See** Article I, Section 8. The United States Supreme Court has stated that this congressional authority and the semi-independent position of Indian tribes has given rise to two independent but related barriers to the assertion of state regulatory authority over tribal reservations. The first barrier is that federal law may preempt the exercise of state authority. The second barrier is that state authority may unlawfully infringe on the right of reservation Indians to make their own laws and be ruled by them. The United States Supreme Court has stated that the two barriers are independent because either, standing alone, can be a sufficient basis for holding a state law inapplicable to an activity undertaken by a Tribe on its reservation. **See** Phillip Geller, J.D., *Validity, Under Federal Constitution, Statutes, and Treaties, of State or Local Tax as Affected by Its Imposition on Indians, Their Property or Activities, or in Connection with an Indian Reservation - Supreme Court Cases*, 73 L. Ed. 2d 1506 at 1510. While the Department recognizes these two barriers to state regulation over Indian tribes, for purposes of this ruling, a detailed analysis and discussion of each barrier is not required. Because each of the transactions addressed by this ruling involve a federally recognized tribe, the Department need only consider these barriers when balancing the respective state, federal and tribal interests after it has been determined that the legal incidence of the applicable tax does not fall on the Tribe.

[vi] Although the sales and use taxes are closely related, the use tax exists apart from the sales tax. **Hartford Parkview Associates Limited Partnership v. Groppo**, 211 Conn. 246, 255-6, 558 A.2d 993 (1989); **see also William Raveis Real Estate, Inc. v. Commissioner**, Conn. Super. Ct. Tax Sess. (Shea, STR), No. CV-91-0387235-S (January 5, 1995). The two taxes "are different in conception . . . [and] are assessments upon different transactions"

International Business Machines Corp. v. Brown, 167 Conn. 123, 129, 355 A.2d 236 (1974). The sales tax is imposed on a retailer "for the privilege of making any sale" in Connecticut and may therefore only be imposed on sales made in this state; the use tax is imposed on the use of an item when it is "purchased . . . for use" in Connecticut and is actually so used, and may be imposed on items purchased anywhere. While the "taxable moment" of the sales tax on sales of tangible personal property occurs when title to the property passes from seller to purchaser, and can be fixed in both time and space on that basis, the imposition of the use tax involves a purchase, wherever made, together with an element of intent to use the property in Connecticut by the purchaser, followed by action upon that intent by the purchaser. **Magic II, Inc. v. Dubno**, 206 Conn. 253, 537 A.2d 998 (1988); **Stetson v. Sullivan**, 152 Conn. 649, 211 A.2d 685 (1965).

[vii] Out-of-state retailers that are engaged in business in Connecticut must register with the Department to collect Connecticut tax. "Engaged in business in this state" means either the selling and leasing of tangible personal property in Connecticut or the rendering of taxable services in Connecticut. Engaged in business in Connecticut includes, but is not limited to, the following acts or methods of transacting business:

- maintaining, occupying or using, permanently or temporarily, directly or indirectly, through a subsidiary or agent any office, place of distribution, sales or sample room or place, warehouse, storage point or other place of business, or
- having any representative, agent, salesman, canvasser or solicitor operating in Connecticut for the purpose of selling or leasing, delivering or taking orders for tangible personal property or services.

Out-of-state retailers that are not engaged in business in Connecticut, but that make out-of-state sales or leases of tangible personal property for use, storage or other consumption in Connecticut or render taxable services in Connecticut, may also register with the Department for authorization to collect tax. Conn. Agencies Regs. §12-426-22.

[viii] For purposes of this ruling, patrons of the Tribe do not include enrolled members of the Tribe.

[ix] Examples of services to real or tangible personal property include, but are not limited to: services to industrial, commercial or income-producing real property, repair services to motor vehicles, electrical repair services, locksmith services, landscaping and horticulture services, maintenance services and janitorial services.

[x] Examples of "other" services include: business analysis, management, management consulting and public relations services, computer and data processing services and services by employment agencies and agencies providing personnel services.

[xi] Conn. Gen. Stat. §12-412(13) defines "meal" to mean "food products which are furnished, prepared or served in such a form and in such portions that they are ready for immediate consumption."

[xii] The general tax rate is 6% for the sale of tangible personal property and enumerated services in Connecticut. However, sales of lodging in Connecticut are taxable at a rate of 12%. **See** Conn. Gen. Stat. §12-408. Conn. Gen. Stat. §12-408, in pertinent part, provides that "[f]or the privilege of making any sales, . . . at retail, in this state for a consideration, a tax is hereby imposed on all retailers at the rate of six per cent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail or from the rendering of any services . . . except, in lieu of said rate of six per cent, (A) at a rate of twelve per cent with respect to each transfer of occupancy, from the total amount of rent received for such occupancy of any room or rooms in a hotel or lodging house for the first period not exceeding thirty consecutive calendar days."

[xiii] In a private letter ruling, the Internal Revenue Service ruled that the Tribe constitutes an Indian tribal government under 26 USC §7701(a)(40).

[xiv] Conn. Gen. Stat. §12-407(7)(f) includes within the definition of "purchase" "any leasing or

renting of tangible personal property.”

[xv] For purposes of both the refund and exemption permit portions of Conn. Gen. Stat. §12-408c, tangible personal property that is purchased from Connecticut retailers must be shipped out of Connecticut within three years from the date of purchase.

LEGAL DIVISION

April 15, 2002

SECTION 10

**OFFICE OF REVENUE AND TAXATION
CONTACT INFORMATION**

**Mashantucket Pequot Tribal Nation
Sales Tax Binder for Third-Party Businesses Doing Business on the
MPTN Reservation**

10. Office of Revenue and Taxation Contact Information

Compliance questions can be answered by the Office of Revenue and Taxation by calling the MPTN Finance Department:

Charles Ferguson, Assistant Controller

Phone: (860) 396-3180

Email: CFerguson@MPTN-nsn.gov

Edward Marolda, Executive Director of Finance

Phone: (860) 396-3272

Email: EMarolda@MPTN-nsn.gov