



South Dakota Legislative Research Council

Issue Memorandum 94-9

TAX COLLECTION AGREEMENTS BETWEEN THE STATE AND TRIBAL GOVERNMENTS

In the early 1970s the South Dakota Legislature adopted SDCL 10-12A, which authorized the Department of Revenue to enter into tax collection agreements with tribal governments in this state. The first tax collection agreement was negotiated in 1971 with the Oglala Sioux Tribe. Agreements were negotiated with the Cheyenne River Sioux Tribe in 1977, the Rosebud Sioux Tribe in 1978, and the Standing Rock Sioux Tribe in 1991.

Tax collection agreements between the state and tribal governments serve several important purposes. The agreements allow the state to collect taxes from non-Indians living and making purchases on reservations; they allow tribal governments to take advantage of the tax collection mechanism of the Department of Revenue; they reduce the possibilities that non-Indians doing business on reservations might be subjected to taxation by both the tribe and the state; and they provide daily contact between tribal government and state government, which contributes to further cooperation.

The 1974 legislation defined "Indian country" as established reservations. The 1991 Legislature broadened that definition to include "lands held in trust for any Indian or Indian tribe within the boundaries of any disestablished Indian reservation or within the disestablished portion of any Indian reservation". (SDCL 10-12A-7). This definition change allows tax agreements with

tribal governments on so called "open" reservations where there are no established reservation boundaries. The state does not currently have any agreements with tribes that meet the 1991 definition. In South Dakota, Sisseton, Flandreau, and Yankton are "open" reservations.

The 1974 legislation relinquished the state's jurisdiction to levy and collect the sales, use, and cigarette taxes "from Indians within Indian country" (SDCL 10-12A-3) and defined "tribal tax" as "any sales or cigarette tax imposed by an Indian tribe on persons subject to the Indian tribe's taxing powers". (SDCL 10-12A-1). In 1981 the state relinquished jurisdiction over the contractors' excise tax, and in 1985 the alternative contractors' excise tax.

Each tribe enacts a tribal ordinance which imposes a tax which is identical to the state tax which is part of the collection agreement. Each ordinance is structured so that any change by the Legislature in a tax covered by the agreement is automatically changed at the tribal level.

The Department of Revenue has legislative authority to enter into agreements for the collection of "any tribal sales and service, use, cigarette, and contractors' excise tax or any other tax or fee" that may be imposed by a tribe. An agreement can include the retention of an administrative fee by the Department of Revenue for the collection of the taxes for a tribe. The fee has to be mutually agreed upon

and be based on a percentage of the gross tax revenue collected by the department. The

department currently retains a fee of one percent of the gross revenue collected.

Each tax collection agreement becomes binding and takes effect once it is approved by the Governor and Attorney General. Before an agreement is approved by the Governor or Attorney General, the Department of Revenue must publish a notice of the agreement in the legal newspaper of the counties that are affected by the agreement. Agreements are effective for five years and they may be renewed with the mutual consent of the parties.

The tax collection agreement may include that the distribution of the tax revenue be a fixed percentage of the total collected in lieu of the exact amount collected from the tribal tax. The state tax is levied on the non-Indians and the tribal tax is levied on the Indians. The census provides the population numbers to distribute the revenue based solely on population, but there is not a third-party source for information on where the Indian and non-Indian dollars are spent. Some tribes argue that tribal members are more likely to make purchases on the reservation than the non-tribal members, and that the distribution of the tax revenue should be based on something other than population. The state contends that the higher income and

purchasing power of non-Indians offsets this factor. The state and tribes have not reached an agreement on how to determine the distribution percentage using actual expenditures.

All of the current agreements use a fixed percentage of total tax collections to distribute the revenue between the tribe and the state. In the Cheyenne River Sioux Tribe agreement the tribe receives 58% and the state 42%. The Oglala Sioux Tribe receives 91% and the state 9%. The Rosebud Sioux Tribe receives 75% and the state 25%. The Standing Rock Sioux Tribe receives 47% and the state 53%.

Although the process of reaching an agreement has not always been without some difficulty, the establishment of tax collection agreements has resulted in a better understanding of the differences and similarities between the tax collection partners. The lack of an agreement is causing litigation between the state and two tribal governments in open reservations over the collection of sales tax from non-Indians for purchases made in tribal casinos. The avoidance of this type of confrontation and the collection and distribution of over \$2 million dollars each year is sufficient cause for the continuation of this form of cooperation between the state and tribal governments.

Tax Collection Agreement Annual Distributions*

	Cheyenne	Oglala	Rosebud	Standing Rock
FY82	\$ 75,138	\$246,241	\$262,577	NA
FY83	580,361	222,976	406,148	NA
FY84	510,777	253,723	375,546	NA
FY85	399,540	262,356	535,346	NA
FY86	443,224	284,052	660,532	NA
FY87	605,269	252,238	444,417	NA
FY88	624,667	335,384	549,233	NA
FY89	606,529	289,566	767,458	NA
FY90	587,324	346,172	724,064	NA
FY91	419,698	474,850	722,531	30,677
FY92	800,288	793,290	664,909	224,446

FY93 619,904 873,586 583,305 264,227

*These amounts are after the 1% administrative fee.

This issue memorandum was written by Scott Peterson, Principal Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
