



Douglas A. Ducey
Governor

Robert Woods
Director

TRIBAL CONSULTATION ANNUAL REPORT

July 1, 2021 – June 30, 2022

Agency Overview

With a mission of “Serving Taxpayers!” the Arizona Department of Revenue (ADOR) collects and remits nearly \$24 billion in tax revenues to the State and local governments, thereby funding many important services to the citizens of Arizona. These taxes include individual and corporate income tax, withholding tax, use tax, luxury tax, transaction privilege tax (TPT), and various other excise taxes. ADOR is also responsible for valuing certain properties of statewide importance for property tax purposes, and exercises general supervision over county assessors in their administration of locally assessed property taxes.

Some of the taxes collected by ADOR are located within tribal lands, specifically businesses not owned by a tribe, tribal enterprise, or an enrolled member of the tribe. These cross-jurisdictional issues span several tax types, creating both opportunities and challenges in fostering State-Tribe tax administration and enforcement. ADOR is also charged with distributing a portion of TPT revenues derived from businesses located on tribal lands that are not owned by the tribe or tribal members to support post-secondary educational institutions on tribal lands. Furthermore, the Department collects and distributes, via Intergovernmental Agreements (IGAs), tribal tobacco tax to the Navajo Nation and San Carlos Apache Tribe.

Tribal Government Consultation Policy

ADOR recognizes the sovereignty of Tribal governments within Indian Country as those concepts are defined by federal law. (Indian Country includes all lands within Reservation boundaries (18 U.S.C. § 1151)). ADOR supports the strengthening of Tribal capacity for self-government and determination. ADOR is committed to continuing cooperative and respectful relationships with Tribes and maintaining mutual respect for the concerns of the State and the Tribes regarding taxation of persons, property and activities on the Reservation.

ADOR will take the following steps and seek reciprocity from the Tribes to do the following:

- Assist Tribal Governments in developing sound tax policies by providing technical assistance, sharing data, conducting joint Tribal-State projects, and cooperatively resolving tax issues.
- Enter into a Compact, IGA, or Memoranda of Understanding (MOU) when it is considered mutually appropriate and beneficial by both ADOR and an interested Tribal Government to advance cooperation on tax issues.

Tribal Consultation Activities

Goal	Objective	Activity and Performance Measure
Maximize tribal tobacco tax revenue received by the Navajo Nation	Advance ADOR tobacco tax collection, distribution, and compliance activities	Through process improvements within its Tobacco Tax Unit and tribal consultation, ADOR collected and distributed \$165,364.60 to the Navajo Nation in FY 2021, helping fund vital tribal government operations.
Maximize tribal tobacco tax revenue received by the San Carlos Apache Tribe.	Advance ADOR tobacco tax collection, distribution, and compliance activities.	Through process improvements within its Tobacco Tax Unit, ADOR collected and distributed approximately \$148,409.90 to the San Carlos Apache Tribe in FY 2021, helping fund vital tribal government operations.
Maximize collection of TPT revenues derived from taxable activities on tribal land to maximize the amount of TPT revenue ADOR can distribute by law to a tribal postsecondary educational institution (Diné College).	Improve taxpayer compliance and collections processes such that TPT revenue collections are maximized.	ADOR collected TPT revenues from taxable activities totaling \$5.2 million in FY 2021, a 70.8% decrease from the prior year due to reduced economic activity in the area. Diné College received \$463,790.01 from ADOR pursuant to A.R.S. § 42-5031.01(C)(1), as well as an additional \$3,036,209.99 pursuant to Laws 2021, Chapter 430, Section 17.
Maximize collection of TPT revenues derived from taxable activities on tribal land to maximize the amount of TPT revenue ADOR can distribute by law to a tribal postsecondary educational institution (Navajo Technical College)	Improve taxpayer compliance and collections processes such that TPT revenue collections are maximized.	ADOR collected TPT revenues from taxable activities totaling \$5.2 million in FY 2021, a 70.8% decrease from the prior year due to reduced economic activity in the area. Navajo Technical College received \$254,363.84 from ADOR, as permitted by A.R.S. § 42-5031.01(C)(2).

Goal	Objective	Activity and Performance Measure
<p>Ensure any qualifying tribal postsecondary educational institutions receive State TPT collections derived from taxable activities on tribal land to support maintenance, renewal and capital expenses pursuant to A.R.S. § 42-5031.01.C.1 (Tohono O’Odham Community College)</p>	<p>Improve taxpayer compliance and collections processes such that TPT revenue collections are maximized.</p>	<p>ADOR collected TPT revenues from taxable activities totaling \$3.5 million in FY 2021, a 59% increase over the prior year. Tohono O’odham Community College received \$345,184.63 from ADOR as permitted by A.R.S. § 42-5031.01(C)(2).</p>
<p>Enhance data sharing of cigarette sales on tribal lands to help ADOR ensure that \$100 million in Master Settlement Agreement payments from tobacco companies continue to be received by the State’s Medicaid program, which also benefits tribal members enrolled in the Arizona Health Care Cost Containment System (AHCCCS)</p>	<p>Enter into data-sharing agreements with tribes to share cigarette sales data.</p>	<p>ADOR successfully renewed an Assurance with the Fort McDowell Yavapai Nation concerning tribal cigarette sales. ADOR continues to implement the Information Sharing Agreement with the Salt River Pima-Maricopa Indian Community for the exchange of tobacco tax information. The Agreement was signed in March 2018 by the SRPMIC President and Governor Doug Ducey.</p>
<p>Ensure Native American veterans that served in the U.S. military from 1993 to 2005 and were domiciled on tribal lands receive tax refunds for Arizona income tax improperly withheld.</p>	<p>Administer the Native American Tax Settlement program authorized by Laws 2016, Chapter 125, Sections 19-27.</p>	<p>Along with the Arizona Department of Veterans’ Services, ADOR created the application forms, communications, and tax systems changes necessary to refund tax due to qualifying Native American veterans, and began receiving applications in early 2017. Through FY 2021, ADOR has issued approximately \$292,586 in refunds to 158 claimants.</p>

Identify the challenge(s) encountered by staff in providing services to tribes and/or tribal community members: One challenge has been educating tribal leadership about the importance of entering into data-sharing agreements with ADOR concerning tobacco sales data, as the data is critical to safeguarding a \$100 million annual payment that helps fund Arizona's Medicaid program. One of the main obstacles to making advances in this regard is that, aside from some state services that may not be available to tribal members enrolled in AHCCCS, there may be little perceived advantage to the tribes in sharing data with ADOR when the agency does not also collect and distribute the tribes' own tobacco taxes on their behalf, as it does for the Navajo Nation and San Carlos Apache Tribe. ADOR will look for more opportunities to emphasize the benefits to tribes of having it act as a service provider and partner in this manner.

In addition, providing education to Native American veterans related to eligibility for tax refunds for Arizona income tax improperly withheld has been a challenge. Because ADOR does not have data on who these taxpayers are, targeted outreach is not an option. In FY 2022, ADOR will look for ways to partner with other groups to get the message out to this taxpayer group that such refunds are available.

Legislative changes that may have an impact on tribes and/or tribal community members:

Laws 2021, Ch. 443 § 4 (SB1110), effective on September 29, 2021, clarifies the scope of TPT exempt activities occurring on Indian Reservations. In particular, it adds new Article 3.1 (A.R.S. § 42-5121 et. seq.) to Title 42, Chapter 5 that codifies the Department's long-standing taxpayer ruling, Arizona Transaction Privilege Tax Ruling TPR 95-11, based on federal case law relating to transactions occurring on Indian Reservations. It also simplifies the standard for establishing that a nontaxable retail sale occurred on an Indian Reservation. TPR 95-11 provides that sales by off-reservation vendors are exempt when the solicitation of the order, the delivery of the goods and the payment for the goods takes place on or from the reservation. There was some difficulty determining when and where those conditions were satisfied, especially in cases of ecommerce purchases. A.R.S. § 42-5122(5) now provides clear guidelines that the purchase must be ordered from and delivered on an Indian reservation to be exempt.

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