

NATIVE AMERICAN FAQs

The following Frequently Asked Questions (FAQs) relate only to the federally recognized Tribes in Michigan who have tax agreements with the State of Michigan and the members of those Tribes. Currently, Michigan has 12 federally recognized Tribes located within its borders. Ten of those Tribes have [tax agreements with Michigan](#).

The following abbreviations and definitions may be used throughout each section of FAQs:

TM: a tribal member is a Native American who is enrolled in the membership of a federally recognized Tribe and who is recognized as a member by that Tribe.

RTM: A resident tribal member is a member of a federally recognized Tribe located in Michigan that has a tax agreement with the State of Michigan (an “agreement Tribe”) and whose principal place of residence is located within their Tribe’s agreement area.

Non-RTM: A non-RTM is an individual who is either not a member of any federally recognized Tribe in Michigan that has a tax agreement with the State or is a member of a federally recognized Tribe in Michigan that has a tax agreement with the State but who does not live within their own Tribe’s agreement area.

Agreement Tribe: A federally recognized Tribe located in Michigan that has a tax agreement with the State of Michigan.

AA: Agreement area is an area negotiated between a particular Tribe and the state of Michigan and designated as Appendix A to a Tribe’s tax agreement with the State and to which certain benefits under the tax agreement attach.

TCE: Tribal Certificate of Exemption refers to Form 3998, *Tribal Certificate of Exemption for Sales and Use Tax*.

General:

FAQ 1. What is “Indian Country?”

Answer: In 1948, Congress gave the concept of Indian Country its present definition. 18 USC section 1151 provides:

"Indian Country" means: All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. See IRS Glossary of Terms for Indian Tribal Governments FAQs

FAQ 2. Is a tribal member that has a principal place of residence within the Tribe's AA but is away for periods of time, such as an over-the-road truck driver who rents lodging elsewhere during the week and only resides at the principal place of residence on weekends, considered an RTM?

Answer: Though the tax agreement doesn't define a principal place of residence, Michigan law has defined it as the "true, fixed, and permanent home to which, whenever absent, he or she intends to return." Whether property used by an RTM is their principal residence depends upon all the facts and circumstances. Factors for a Tribe to consider in determining a person's principal residence are the address the person uses on their driver's license, voter registration, tax return, bills and other correspondence, the location of the person's employment, where the person's immediate family live, where the person spends the majority of time during the year.

Individual Income Tax

FAQ 3. Is the income of a member of a federally recognized Tribe in Michigan that has a tax agreement with the state of Michigan taxable?

Answer: It depends on where the tribal member lives and what type of income was earned. If the tribal member lived within his or her Tribe's AA when the income was received, making them an RTM, and the income is non-business income, the individual's income is not taxable in Michigan regardless of where it was earned.

FAQ 4. What is the difference between business and non-business income under the tax agreement?

Answer. Non-business income, whether earned within the Tribe's AA or outside of it, is defined under the tax agreement to include all wage income (including unemployment compensation), all interest and passive dividends, all rents and royalties derived from real property located within the Tribe's AA; all rents and royalties derived from tangible personal property to the extent the property is used within the AA; capital gains from the sale or exchange of real property located within the AA; capital gains from the sale or exchange of tangible personal property that is located in the AA at the time of sale; capital gains from the sale or exchange of intangible personal property; pension and retirement income; per capita payments; and all gaming winnings.

Business income is anything other than income defined under the tax agreement as non-business income. Michigan law, [MCL 206.4](#), defines business income as all income arising from transactions, activities, and sources in the regular course of the taxpayer's trade or business. Business income includes a taxpayer's distributive share of income or losses reported on a federal schedule K-1, including portfolio income. Portfolio income includes interest income, dividend income, royalty income, and net short-term and long-term capital gains (losses) to the extent included in federal adjusted gross income. Rental income is also considered business income if it is determined to be an integral part of the taxpayer's trade or business.

FAQ 5. How should an RTM reflect income that is exempt from taxation on the MI-1040, Michigan Individual Income Tax Return?

Answer: The MI-1040 should be filed using the regular instructions provided in the MI-1040 Instruction Booklet. Subtractions of income on the MI-1040 Schedule 1, should be entered according to the Schedule 1 Instructions. **However, the same income cannot be subtracted out on more than one line of Schedule 1. Therefore, if an RTM has multiple types of non-business income, the income should be subtracted on only one of the lines of Schedule 1. The remainder of any non-business income that is not fully subtracted on other lines of Schedule 1 may be subtracted on line 20 of the MI-1040 Schedule 1.** Although future renditions of the MI-1040 Schedule 1 may change the associated line number, this line specifically references the RTM income exemption.

Example 1: RTM Benjamin has military earnings for the year of \$35,000 and other wage earnings of \$22,000 from a local hardware store he works at on weekends and nights for total adjusted gross income of \$57,000. Benjamin can subtract his military pay of \$35,000 on line 14 “*Taxable Social Security benefits or military pay (not retirement) included on MI-1040, line 10.*” Benjamin can subtract the remaining \$22,000 on line 20 “*Resident Tribal Member income exempted under a State/Tribal tax agreement.*” He may not subtract his total adjusted gross income of \$57,000 on line 20 because this would result in a subtraction of the military income twice.

Example 2: RTM Rosalie has social security benefit income of \$21,000 per year, plus retirement income of \$27,000, plus income from services as a home health aide of \$15,000 for a total adjusted gross income of \$63,000. Rosalie can subtract her taxable social security income of \$21,000 on line 14 “*Taxable Social Security benefits or military pay (not retirement) included on MI-1040, line 10.*” She can subtract the appropriate amount of retirement income if any, according to the instructions for those lines. If the subtraction for her retirement income on those lines is less than her full retirement income, she may deduct any remaining retirement income and all her home health aide income on line 20 “*Resident Tribal Member income exempted under a State/Tribal tax agreement.*” She may not subtract any nonbusiness income on line 20 that was included on any other line of the Schedule 1 because this would result in a subtraction of more than her total adjusted gross income.

FAQ 6. How should a married couple, one of whom is an RTM and one of whom is a non-RTM, reflect the exemption from income tax when filing a joint return?

Answer: The MI-1040 should be filed using the regular instructions provided in the MI-1040 Instruction Booklet. Subtractions of income on the MI-1040 Schedule 1, should be entered according to the Schedule 1 Instructions. **However, only the RTM’s non-business income that is not fully subtracted on other lines of Schedule 1 can be subtracted on line 20 of the MI-1040 Schedule 1. The non-RTM spouse’s income may not be included in line 20.**

Example 3: Frank and Susan, a married couple filing joint income tax returns, have adjusted gross income (AGI) of \$93,000. Frank is an RTM, Susan is not. Their AGI is composed of the following:

| Frank | Income | Susan | Income |
|--------------------|---------------|----------------|---------------|
| Social Security | 20,000 | Wages | 26,000 |
| Retirement income | 27,000 | Pension income | 15,000 |
| Per Capita Payment | 5,000 | | |
| | 52,000 | | 41,000 |

Frank can subtract his social security income on line 14 “*Taxable Social Security benefits or military pay (not retirement) included on MI-1040, line 10.*” He can subtract the appropriate amount of retirement income if any, based on the instructions provided, on the lines pertaining to that income type. He can subtract any remaining retirement income and all his per capita income on line 20 “*Resident Tribal Member income exempted under a State/Tribal tax agreement.*” Susan may *not* subtract her wage income. She can subtract the appropriate amount of retirement income if any, based on the instructions provided, on the lines pertaining to that income type.

FAQ 7. If I am an RTM and my spouse is not a tribal member or is a tribal member but of a different tribe, may I exempt both my income and my spouse’s income on a joint income tax return?

Answer: No. Since your spouse is not an RTM, their income cannot be included in the exempt income reported on line 20 “*Resident Tribal Member income exempted under a State/Tribal tax agreement.*”

FAQ 8. Can an RTM file the tribal non-obligated spouse form at the time they file their MI-1040 income tax return if their non-RTM spouse has a state owed debt so as to avoid any delay in processing the refund claimed?

Answer: No. The Income Allocation for Non-Obligated Spouse form is not available online for download. It is automatically generated for mailing to taxpayers when one person on a jointly filed return is potentially liable for a debt. Due to tax laws, this form is not sent out in advance. To ensure swift processing and release of any refund of the non-obligated spouse, complete and return the provided form as quickly as possible.

FAQ 9. As an RTM, which wages reported on the W-2 should I report as exempt income on line 20 of Schedule 1, my social security wages (box 3 of the W-2) or my taxable wages (box 1 of the W-2)?

Answer: Taxable wages as reported in box 1 of the W-2 rather than social security wages in box 3 of the W-2 are the wages that may be removed from income on line 20 of Schedule 1 because only taxable wages are included in adjusted gross income (AGI). Reporting social security wages incorrectly reduces Michigan taxable income by amounts not included in AGI.

FAQ 10. If I am an RTM and I have taxable social security income included in my AGI, on what lines can I subtract that income on the Michigan Schedule 1 Additions and Subtractions Form?

Answer: An eligible RTM may only subtract social security income on the Taxable Social Security Benefits line (line 14) of Schedule 1. That same income cannot also be subtracted on line 20, the RTM income exemption line of Schedule 1.

Example 4: Eligible RTM has \$10,000 taxable social security and \$15,000 per capita distribution; non-RTM spouse has \$70,000 in wages for a total of \$95,000 in AGI. The couple's Schedule 1 must reflect the \$10,000 social security income on the social security line and the \$15,000 per capita distribution income on the tribal subtraction line. This results in a schedule 1 subtraction of \$25,000 from AGI for a total AGI of \$70,000.

FAQ 11. How does a TM who moved into or out of their Tribe's AA, and therefore was only an RTM for a portion of a calendar year, treat per capita payments received from the Tribe on his or her income tax return?

Answer: The tax agreement exempts from income taxation all per capita payments by the Tribe to RTMs. Therefore, if the payment was received while the TM was living within their Tribe's AA, the payment is 100% exempt. If it was received while the TM was not living within their Tribe's AA, it is not exempt from State income taxation.

FAQ 12. If an RTM retires while living in the Tribe's AA, is their retirement income subject to state income tax? Does the retirement income have to be apportioned based on where it was earned if the member lived outside the Tribe's AA at various times during his or her work history?

Answer: Pension and retirement income is non-business income and is exempt when distributed to an RTM. See MCL 206.30(1)(v). An RTM would subtract the income on Schedule 1 like all other exempt non-business income. If the TM moves from the Tribe's AA, the non-business income exemption no longer applies. However, if the TM remains in the state of Michigan, other retirement subtractions may be available. See MCL 206.30(1)(f).

Individual Income Tax – Business Income

FAQ 13. If an RTM earns business income derived from sales occurring on Tribal and Trust Lands (TTL), is this income exempt and if so, how should it be reported or exempted on the Michigan return, and what records must be kept in support?

Answer: The RTM must separate the income derived from sales occurring within the Tribe's TTL from sales occurring inside the state of Michigan but outside the Tribe's TTL and also those sales occurring outside the state of Michigan. Income derived from sales occurring within TTL that was included in the RTM's federal adjusted gross income may be exempted from Michigan income by reporting it on line 20 of Schedule 1.

It does not matter whether the RTM operates as a DBA or what law the business was established under. If the income flows through to the RTM as an individual, the RTM must still follow the above procedures to separate their income as directed.

Taxpayers should keep records sufficient to demonstrate that exempted income was attributable to sales occurring inside of TTL or outside the state of Michigan.

FAQ 14. When reporting business income for an RTM, how are the sales transactions sourced?

Answer: If the sale is of tangible personal property, it is sourced to Michigan if the property is shipped or delivered to a purchaser within Michigan but outside of TTL. Sales of other than

tangible personal property (e.g., services) are sourced to Michigan if the business activity is performed in Michigan but outside of TTL.

If the business activity is performed both in Michigan and also in another state(s) or within TTL, but a greater proportion of the business activity is performed in Michigan, the sale is sourced to Michigan. Income derived from sales made within TTL or outside the state of Michigan may be subtracted on the MI-1040, Schedule 1, line 20. There is no need to complete an MI-1040H Form, unless the business income is derived from a multistate business.

FAQ 15. Does an RTM who apportions their income between sales occurring in Michigan and sales occurring within TTL also need to complete and file a form MI-1040H, Michigan Schedule of Apportionment?

Answer: No. An RTM's tribally exempt income should be reported on line 20 of Schedule 1.

FAQ 16. Is a TM's income from commercial treaty fishing exempt from State income tax?

Answer: Yes, income derived from commercial treaty fishing is exempt from State income tax to the extent it's excluded from federal income. There is no exemption to report on the Michigan income tax returns or Schedules because the income is already excluded from federal adjusted gross income, which serves as the starting point for calculating Michigan taxable income.

FAQ 17. Is an RTM who owns and operates a business formed as an LLC under State law exempt from State income tax? What if the business is formed as a DBA (doing business as)? What if the business is formed under tribal law rather than state law?

Answer: An LLC formed under State law is generally a flow-through entity meaning the income flows through the business to the individual owners and is reported by the owner(s) on their individual income tax return. The income derived from the business is business income and is apportioned based on the sales factor. See FAQ 14 for more information on sourcing. The answer is the same whether the business is a DBA or whether it was formed under tribal law rather than state law. The provisions of the tax agreement apply to an RTM business owner without regard to the law under which the business was formed. A DBA does not recognize a legal entity separate from the RTM owner for tax purposes. Therefore, the income flows directly to the owner and is reported on their individual income tax return. Only those sales in Michigan and outside of TTL are subject to income tax regardless of entity type or whose law the entity was formed under. See FAQ 14 for more information on sourcing.

Annual Sales and Use Tax Refund, Form 4013

FAQ 18. When claiming the sales and use tax credit available to an RTM, if the e-file software I'm using for my MI-1040 does not support the filing of Form 4013 *Michigan Resident Tribal Member Annual Sales Tax Credit*, how do I file it?

Answer: If the software being used does not support filing of Form 4013, DO NOT attach it as a PDF to the MI-1040. Instead, paper file it separately and DO NOT include a copy of the RTM's MI-1040 when filing the Form 4013.

Licenses and Registrations

FAQ 19. Are Tribes, Tribal Entities, and RTMs that sell tangible personal property at retail required to comply with Michigan licensure and registration provisions for sales and use taxes?

Answer: If a Tribe has not imposed its own sales and use taxes, then yes, but only if the Tribe, Tribal Entity, or RTM expects any tax liability. If the Tribe has not imposed its own sales and use taxes, liability arises for sales to non-TMs and non-RTMs within TTL and for sales outside TTL (regardless of the purchaser's tribal membership). There would be no expected sales tax or use tax liability for tax-exempt sales (e.g., the Tribal Entity is a wholesaler) or for sales only to RTMs or tax-exempt TMs.

If the Tribe imposes its own sales and use taxes, the Tribe, a Tribal Member, or a Tribal Entity operating within the Tribe's TTL need not comply with Michigan licensure and registration provisions for sales tax or use tax except for sales occurring outside that Tribe's TTL.

FAQ 20. Are Tribes, Tribal Entities, and RTMs that have employees required to comply with Michigan licensure and registration provisions for withholding tax?

Answer: A Tribe, Tribal Entity, or RTM is expected to withhold and to register for withholding tax if it has a withholding obligation. It will have a withholding obligation if it employs anyone (regardless of tribal membership) outside TTL or if it employs non-RTMs within TTL.

Corporate Income Tax and the former Michigan Business Tax

FAQ 21. For agreement Tribes, is a corporation formed under Tribal law and owned in whole or in part by an Agreement Tribe, its Tribal entities, or its Tribal Members, treated differently than a corporation formed under State law for purposes of any exemption from State corporate income taxation?

Answer: No. The exemption from income tax provided for in the tax agreements is the same whether the corporation was formed under Tribal law or State law.

FAQ 22. How does a corporation in which the ownership interests are entirely comprised of one or more Tribes, Tribal members, or Tribal entities determine what income is taxable under the State's Corporate Income Tax or the former Michigan Business Tax?

Answer: The corporation whose ownership is entirely comprised of one or more Tribes, Tribal members, or Tribal entities will apportion its income based on a ratio called the sales factor, which includes in the sales factor numerator those sales that are made within the State, but excluding from the numerator those sales that are attributable to the "Expanded Tribal Agreement Area," meaning any sale made to a customer within the combined Agreement Areas of each Tax Agreement Tribe. The denominator of the sales factor is total sales made everywhere.

Part 1 of Form 5027 *Michigan Corporate Income Tax (CIT) Tribal Agreement Apportionment* (or Form 4597 *Michigan Business Tax (MBT) Tribal Agreement Apportionment* for MBT filers) should be used to assist the taxpayer in calculating the sales factor for entities wholly comprised of tribal ownership interests.

FAQ 23. How does a corporation which is not wholly owned by any combination of Tribes, Tribal members, or Tribal entities determine what income is taxable under the State's Corporate Income Tax or the former Michigan Business Tax?

Answer: The corporation whose ownership is not wholly owned by any combination of Tribes, Tribal members, or Tribal entities will apportion its income based on a ratio called the sales factor, which includes in the sales factor numerator those sales that are made within the State, but excluding from the numerator those sales that are attributable to the "Expanded Tribal Agreement Area," meaning any sale made to a customer within the combined Agreement Areas of each Tax Agreement Tribe. The denominator of the sales factor is total sales made everywhere.

The portion of the tax base attributable to the "Expanded Tribal Agreement Area" multiplied by the percentage of tribally owned interests is exempt from State taxation. The portion of the tax base attributable to non-Tribes, Non-Tribal members or Non-Tribal entities is subject to the corporate or Michigan business tax for activity within the State both within and outside the "Expanded Tribal Agreement Area" unless the sale is destined to the Tribe, a resident tribal member, or shipped to a location outside of the State.

Form 5028, *Michigan Corporate Income Tax (CIT) Tribal Agreement Ownership Schedule* should be used to assist the taxpayer in determining the percentage of ownership by Tribes, Tribal members, and Tribal entities and Non-Tribes, Non-Tribal members, and Non-Tribal entities. Those percentages are then used on Form 5027 *Michigan Corporate Income Tax (CIT) Tribal Agreement Apportionment* to assist the taxpayer in calculating the sales factor applicable to each of the ownership interest types, tribal or non-tribal.

General Sales and Use Tax Questions

FAQ 24: Are TMs, RTMs, Tribes, and tribal entities eligible to use the Form 5633, *Purchaser Refund Request for a Sales or Use Tax Exemption*?

A: Yes. All taxpayers eligible for an applicable sales or use tax exemption, including Tribes, TMs, RTMs, and tribal entities, can use Form 5633 to request a refund if they failed to claim an available sales or use tax exemption at the time of purchase. Public Act 168 of 2018, effective January 1, 2019, permits a purchaser to request a refund directly from Treasury where that purchaser failed to present a claim of exemption or otherwise notify the seller of an available exemption from sales or use tax at the time of purchase.

Agreement Tribes that elected the exemption method were previously prohibited from claiming a refund if the resident tribal member failed to claim the exemption at the time of purchase.

Claims for refund must be made within four years of the date of purchase, and all criteria listed on Form 5633 must be satisfied. Additionally, claimants must submit a completed Form 3998, *Tribal Certificate of Exemption for Sales and Use Tax (TCE)*, a Letter of Authorization to use Form 3998 signed by a Treasury representative for use in the calendar year in which the purchase is made, as well as a receipt or record of purchase. If the purchase pertains to a vehicle, the claimant must provide a validated RD-108L form supplied by the dealer or Secretary of State

indicating that sales tax was paid. If use tax was paid on the vehicle the claimant must provide a validated TR-11L form supplied by the Secretary of State.

FAQ 25. Is an RTM who lives in a rental house or apartment entitled to exemption from the sales and use tax for the purchase or use of materials used to renovate or improve the property in which they live if they are the sole purchaser? What if they are not the sole purchaser?

Answer: Yes, assuming the dwelling is their principal residence. However, the exemption amount, if above \$3,200 (as adjusted by the Consumer Price Index), is subject to repayment if the RTM seeks exemption for the purchase of materials to construct, renovate, or improve a new principal residence within two years of receiving the first exemption claim. If it can be established that the RTM and a non-RTM jointly purchased the materials, the purchase is 50% exempt from the sales or use tax.

FAQ 26. How is the term principal residence defined for purposes of the tax agreement?

Answer: Michigan law defines a principal residence as the one place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established. Whether property used by an RTM is their principal residence depends upon all the facts and circumstances. Factors to consider in determining a person's principal residence are the address the person uses on their driver's license, voter registration, tax return, bills and other correspondence, the location of the person's employment, where the person's immediate family live, where the person spends the majority of time during the year.

FAQ 27. Is an RTM who lives in a home owned by a non-RTM entitled to exemption from the sales and use tax for the purchase of materials used to renovate or improve the property in which they live if they are the sole purchaser? What if they are not the sole purchaser?

Answer: Yes, assuming the dwelling is their principal residence. However, the exemption amount, if above \$3,200 (as adjusted by the Consumer Price Index), is subject to repayment if the RTM seeks exemption for the purchase of materials to construct, renovate, or improve a new principal residence within two years of receiving the first exemption claim. If it can be established that the RTM and a non-RTM jointly purchased the materials, the purchase is 50% exempt from the sales or use tax.

FAQ 28. Is an RTM who is purchasing real estate under a land contract entitled to exemption from the sales and use tax for the purchase of materials used to renovate or improve the property in which they live if they are the sole purchaser?

Answer: Yes, assuming the real estate is their principal residence. However, the exemption amount, if above \$3,200 (as adjusted by the Consumer Price Index), is subject to repayment if the RTM seeks exemption for the purchase of materials to construct, renovate, or improve a new principal residence within two years of receiving the first exemption claim.

FAQ 29. May an RTM use a Form 3998, *Tribal Certificate of Exemption for Sales and Use Tax* to claim exemption from the sales and use tax on the purchase of home appliances?

Answer: Direct exemptions using the TCE generally apply only to those enumerated items identified in the agreement such as vehicles, snowmobiles, modular homes, and items purchased

for permanent affixation to an RTM's principal residence. Appliances such as stoves and refrigerators are not generally considered to be permanently affixed. See RAB 2016-4 for more information regarding when property is considered permanently affixed to real estate.

Permanently affixed items such as furnaces, water heaters, and water softeners qualify for use of the TCE if accepted by the vendor. Items for which the TCE is not applicable are still sales and use tax exempt. The exemption is realized within the annual sales and use tax credit claimed using Form 4013.

FAQ 30. Does a fence installed on an RTM's principal residence qualify for an exemption?

Answer: Yes. Assuming the fence is permanently affixed to the land considered part of the RTM's primary residence, it would qualify as an improvement and would be exempt. It would not qualify if it were affixed to a separate parcel of property or installed for commercial use.

FAQ 31. Does a shed installed on an RTM's principal residence property qualify for an exemption?

Answer: Yes. So long as the shed is permanently affixed to the land considered part of the RTM's primary residence, it would qualify as an improvement and would be exempt. It would not qualify if it were affixed to a separate parcel of property or installed for commercial use.

FAQ 32. Is an above-ground pool that is attached to a deck at an RTM's principal residence and that has a hard-wired pump and heater exempt from sales and use tax?

Answer: Assuming the pool remains in place and is not taken down or removed periodically, these facts establish that the pool is affixed to the RTM's principal residence and is exempt.

FAQ 33. Is an RTM's purchase of a snowplow affixed to a vehicle exempt?

Answer: It depends upon whether the snowplow is purchased for personal or commercial use, where the transaction takes place, and where the snowplow is to be used. Section III.A.2 of the tax agreement governs purchases of items by an RTM. Subsection a. applies to the purchase of tangible personal property other than motor vehicles *for a commercial use*. Therefore, if the snowplow is purchased for commercial use, to be exempt from sales and use tax, the transaction must take place in TTL and be used exclusively within TTL. Subsection b. applies to the purchase of tangible personal property *for personal use* and is exempt from sales and use tax if the transaction takes place within the AA and the property is used exclusively within the AA. Therefore, if the snowplow is purchased for personal use, it is exempt if purchased and used exclusively within the AA. However, direct exemptions using the TCE generally apply only to those enumerated items identified in the agreement such as vehicles, snowmobiles, modular homes, and items purchased for permanent affixation to an RTM's principal residence. Items for which the TCE is not applicable are still sales and use tax exempt. The exemption is realized within the annual sales and use tax credit claimed using Form 4013.

Commercial Treaty Fishing

FAQ 34. A TM of an Agreement Tribe purchases a boat and truck to exercise commercial treaty fishing rights. The TM does not live in the Tribe's AA. Is the member's purchase exempt from sales and use tax?

Answer: Yes, if the TM uses the boat and truck solely for commercial fishing in waters where their Tribe has commercial treaty-fishing rights. If the boat, truck, or both are used for other purposes, such as recreation, subsistence fishing, or general transportation or outside the Tribe's treaty waters, then a generally applicable sales or use tax exemption must apply for the purchase to be exempt. There are generally applicable sales and use tax exemptions for purchases used directly in gathering fish. See MCL 205.54a(1)(h); MCL 205.94(1)(dd).

If there is no generally applicable exemption for some of the uses or locations for the boat and truck, their use must be apportioned: the use for commercial treaty fishing in treaty waters would be exempt, but other uses would be taxable.

Vehicle purchases:

FAQ 35. Are agreement Tribes exempt from Michigan sales or use tax on the purchase or lease of passenger vehicles?

Answer: Agreement Tribes are exempt from Michigan sales and use tax on the purchase of vehicles, including automobiles, pick-up trucks, watercraft, snowmobiles, and off-road vehicles, regardless of where purchased or used provided the vehicles are primarily used (95% or more) in performing a tribal governmental function as outlined in the tax agreement. The exemption may be claimed when the Tribe presents a completed Form 3998, *Tribal Certificate of Exemption for Sales and Use Tax* and a Letter of Authorization to use the TCE signed by a Treasury representative for use in the calendar year in which the purchase is made.

FAQ 36. Are TMs exempt from Michigan sales or use tax on the purchase or lease of passenger vehicles, watercraft, snowmobile or other off-road vehicle?

Answer: No. Only RTMs are exempt from sales and use tax on the purchase of passenger vehicles regardless of where purchased within the state of Michigan and regardless of where used so long as the vehicle is purchased for non-commercial use and is principally garaged, berthed or stored within the Tribe's AA, and the RTM is the primary user of the vehicle.

An RTM presenting a completed Form 3998, *Tribal Certificate of Exemption for Sales and Use Tax* obtained from their Tribe along with a Letter of Authorization to use the TCE signed by a Treasury representative for use in the calendar year in which the purchase is made is exempt from sales and use tax on the purchase or lease of a passenger vehicle.

FAQ 37. Are RTMs exempt from sales and use tax when purchasing a vehicle, watercraft, snowmobile, or other off-road vehicle from a private seller (a non-dealer)?

Answer: Yes, if the RTM purchased the item for personal use, the RTM is the primary user, and the vehicle is principally garaged, berthed, or stored within the Tribe's AA.

FAQ 38. If an RTM purchases from a non-dealer private seller certain vehicles, watercraft, snowmobiles or other off-road vehicles, which are to be principally garaged, berthed, or stored within their Tribe's AA, what procedure should the RTM follow to obtain the exemption when registering the vehicle at the Secretary of State?

Answer: When registering the vehicle, the RTM should present to the Secretary of State a completed Form 3998, *Tribal Certificate of Exemption for Sales and Use Tax* obtained from their Tribe along with a Letter of Authorization to use the TCE signed by a Treasury representative for use in the calendar year in which the purchase is made.

FAQ 39. What documentation is needed by an RTM to obtain a refund of sales tax paid on a watercraft?

Answer: If the RTM paid use tax to the Secretary of State, claimants must submit to Treasury a completed Form 3998, *Tribal Certificate of Exemption for Sales and Use Tax*, a Letter of Authorization to use the TCE signed by a Treasury representative for use in the calendar year in which the purchase is made, as well as a receipt or record of purchase, and for purchases of watercraft, Form WR-11L, *Application for Michigan Watercraft Title*, supplied by the Secretary of State indicating that sales or use tax was paid.

FAQ 40. If a married couple purchases a vehicle together, and their names appear jointly on the vehicle's title and one spouse is an RTM and the other is not, is the sale exempt from sales tax?

Answer: Only partially. As a 50% owner, the RTM purchaser is entitled to a 50% exemption from sales tax if the vehicle is purchased for non-commercial use, is used primarily by the RTM and principally garaged, berthed, or stored within the Tribe's AA.

FAQ 41. If an RTM purchases a vehicle jointly with another individual who is not their spouse and is also not an RTM and the vehicle is jointly titled in both their names, is the transaction exempt from sales tax?

Answer: Only partially. As a 50% owner, the RTM purchaser is entitled to a 50% exemption from sales tax if the vehicle is purchased for non-commercial use, is used primarily by the RTM and principally garaged, berthed, or stored within the Tribe's AA.

FAQ 42. If a non-RTM parent purchases a vehicle for a minor child who is an RTM or whose custodial parent is an RTM (in the event that the minor has not been identified as an RTM in the Tribe's records) and the vehicle is jointly titled in the names of the minor child and the non-RTM parent, is the transaction exempt from sales tax? What if under the same facts, the custodial parent is a non-RTM?

Answer: Where the custodial parent is an RTM, the transaction qualifies for a 50% exemption from sales tax based on the residency of the minor child within the Tribe's AA if the vehicle is purchased for non-commercial use, is used primarily by the minor child or RTM and principally garaged, berthed, or stored within the Tribe's AA.

Under the same facts, where the custodial parent is a non-RTM, the transaction is not exempt from sales tax.

FAQ 43. An RTM plans to purchase a passenger vehicle for their minor child over whom he shares joint physical custody with the child's non-RTM parent. The non-RTM parent plans to contribute to the purchase and both parents seek to be on the vehicle title. Is the purchase exempt from the sales tax, and if so, how should he proceed to obtain the exemption? Does it matter where he makes the purchase?

Answer: The purchase is 50% exempt from the sales tax regardless of where the purchase is made so long as the purchase is made in Michigan, is purchased for non-commercial use, is used primarily by the RTM or their minor child, and the vehicle is principally garaged, berthed, or stored within the AA.

FAQ 44. Can an RTM of an Agreement Tribe who purchased a vehicle outside of Michigan for personal use in Michigan and paid sales tax to the state in which the purchase was made claim a refund from Michigan of the tax paid?

Answer: No. Since the tax was remitted to another state, Michigan did not collect the tax and cannot refund what it did not collect.

FAQ 435. If an RTM makes a purchase of a vehicle from a retail seller and fails to claim a sales tax exemption at the time of the purchase, may the RTM claim a refund of the sales tax paid in connection with the transaction?

Answer: Yes. As of January 1, 2019, Michigan law allows a purchaser that failed to claim an exemption at the time of purchase to do so within four years of the date of purchase. The RTM must complete a Form 5633 *Purchaser Refund Request for a Sales or Use Tax Exemption* and obtain the seller's signature on the form and submit it along with the TCE and a validated RD-108L substantiating payment of the tax to the State. An RD-108 form is a combined tax collection, vehicle title and registration application, and statement of vehicle sale.

FAQ 46. Is an RTM exempt from sales and use tax for the purchase of a lawn tractor or farm tractor under the provision of the tax agreement exempting certain personal use vehicles (including passenger vehicles, motorcycles, recreational watercraft, snowmobiles, and off-road vehicles) if all other conditions are met?

Answer: No. Tractors are neither passenger vehicles nor do they qualify as an off-road vehicle according to Michigan law. However, they may qualify for the generally applicable agricultural production exemption. See RAB 2023-9.

FAQ 47. Is an RTM exempt from sales and use tax on the purchase of a trailer for personal use under the terms of the Tax Agreement between an RTM's Tribe and the State of Michigan?

Answer: Yes; they are exempt from sales and use tax on the purchase of a trailer for personal use if the transaction takes place within the Tribe's AA and the trailer is used exclusively within that area. However, direct exemptions using the TCE generally apply only to those enumerated items identified in the agreement such as vehicles, snowmobiles, modular homes, and items purchased for permanent affixation to an RTM's principal residence. A vendor may or may not choose to accept the TCE for a trailer. Items for which the TCE is not applicable or is not accepted by the vendor are still sales and use tax exempt. The exemption is realized within the annual sales and use tax credit claimed using Form 4013.

FAQ 48. Is an RTM exempt from sales and use tax on the purchase of a trailer for commercial use under the terms of the Tax Agreement between their Tribe and the State of Michigan?

Answer: Yes, if the transaction takes place within the Tribe's TTL and the trailer is used exclusively within that area.

FAQ 49. Are all types of recreational vehicles, including campers, fifth wheels, and pop-up campers eligible for the sales and use tax exemption under the tax agreement?

Answer: Yes. A recreational vehicle as defined by the Michigan Vehicle Code is defined broadly to include motor homes, travel trailers, park model trailers, and any vehicle designed to provide temporary living quarters for recreational, camping, travel, or seasonal use whether it has its own power or is towed by a motor vehicle.

FAQ 50. For what purchases may an RTM use Form 3998, *Tribal Certificate of Exemption for Sales and Use Tax* to claim an exemption at the time of purchase?

Answer: The TCE may be used to purchase the following items exempt from sales or use tax if the RTM obtains a completed TCE from their Tribe and presents it at the time of purchase along with a properly dated Letter of Authorization: tangible personal property acquired for use in treaty fishing, personal use vehicles, recreational watercraft, snowmobiles, off-road vehicles, a modular or mobile home to be used as a principal residence of a RTM, and tangible personal property purchased for the purpose of affixing to real estate.

For all other items exempt from sales and use tax under the Tax Agreement, an RTM claims the exemption through an annual sales tax credit on Form 4013 *Resident Tribal Member's Annual Sales Tax Credit*. The annual sales tax credit is based on a percentage of modified adjusted gross income as set forth in the Tax Agreement between the RTM's Tribe and the State of Michigan.

FAQ 51. If an RTM purchases certain vehicles, watercraft, snowmobiles, or other off-road vehicles from a non-dealer private party and later registered the vehicle at the Secretary of State and paid use tax, may the RTM use Form 5633, *Purchaser Refund Request for a Sales or Use Tax Exemption* to claim a refund from Treasury?

Answer: No. Form 5633 is for refunds of sales tax paid to a *seller*. The RTM may seek a use tax refund directly from Treasury by submitting proof of the tax paid, typically by submitting a completed Secretary of State Form TR-III, Application for Michigan Vehicle Title.

Construction Materials and Affixation

FAQ 52. Can a contractor that has been subcontracted to do a construction or landscaping project at a tribal casino purchase project materials tax-exempt, and if so, how should they go about doing so? Can the contractor use Treasury's Form 3372, *Michigan Sales and Use Tax Certificate of Exemption* from the Tribe to purchase the materials tax-exempt?

Answer: The purchase can be made tax-exempt using the following process. The Tribe must complete Form 3998, *Tribal Certificate of Exemption for Sales and Use Tax*, listing itself as the purchaser in Part 1. If there is a general contractor in addition to a subcontractor, like a construction or landscaping company, the general contractor's information will be used to complete Part 3 of the TCE. Since the subcontractor will not be listed on the TCE, the general

contractor must complete and give to the subcontractor a Form 3372, *Michigan Sales and Use Tax Certificate of Exemption*, identifying the vendor/supplier of materials and indicating as a basis for the exemption claim “affixation to real estate under a tribal state tax agreement.” The subcontractor must present a completed TCE, a completed Form 3372, and a copy of the Tribe’s *Letter of Authorization* to use the TCE provided by Treasury for the current year to the vendor/supplier of the materials being purchased for affixation. The subcontractor as well as the vendor and Tribe should retain a copy of all documents completed by or submitted to them.

FAQ 53. An RTM owns a home with her non-RTM spouse. The couple intends to purchase materials at a local home store to erect a fence to enclose the yard of their home, which is their principal residence. Is the purchase exempt from the sales tax, and if so, how should the couple proceed to obtain the exemption?

Answer: The purchase would be 50% exempt from sales tax because it is made by an RTM and a non-RTM and affixed to the principal residence jointly owned and occupied by both an RTM and a non-RTM. To obtain the exemption, the RTM will obtain a completed Form 3998, *Tribal Certificate of Exemption for Sales and Use Tax* from her Tribe listing her as the purchaser and checking the box for a 50% exemption. Along with the completed TCE, the Tribe will provide the RTM the Letter of Authorization for the current tax year. When making the purchase, the RTM will present the Forms to the retailer.

FAQ 54. A TM intends to build a home within his Tribe’s AA where he will live upon completion of the construction. Can he purchase the building materials for the construction of the home without incurring sales or use tax even though he is not yet an RTM? If so, how can the tax exemption be claimed by the various contractors performing work under the building contract?

Answer: Yes; if the materials are purchased, used, or acquired in the performance of a contract to build his principal residence and the TM will occupy the residence as his principle residence within 18 months of the purchase of the materials, the purchase is tax exempt from both sales and use tax.

If the purchases of materials are made by the general contractor, the TM will obtain from his Tribe a completed Form 3998, *Tribal Certificate of Exemption for Sales and Use Tax*, listing himself as the purchaser and the contractor as the seller in Part 3 as well as a Letter of Authorization for the current tax year. The completed TCE and the Letter of Authorization may be presented by the general contractor to any vendors or retailers for sales or use tax exemption on purchases of materials.

If the purchases of materials are made by a subcontractor, the same procedure is used but the subcontractor will additionally complete and present Form 3372, *Michigan Sales and Use Tax Certificate of Exemption* along with the other documents to the vendor or retailer.