

## Emily Deach

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**Subject:** Online Sales Tax update  
**Attachments:** SMC Chapter 4.pdf; 3. Intergovernmental Agreement.pdf; 4. Addendum A - Remote Sales Tax Code.pdf

**From:** Heather Rodig <h.rodig@skagway.org>  
**Sent:** Friday, November 8, 2019 9:57 AM  
**To:** Steve Burnham <S.Burnham@skagway.org>; Brad Ryan <manager@skagway.org>  
**Cc:** Leola Mauldin <l.mauldin@skagway.org>; Emily Deach <e.deach@skagway.org>  
**Subject:** RE: Online Sales Tax update

I meant to bring this up at the finance meeting yesterday. I talked with Nils this morning and asked a few questions. Here are my thoughts/concerns:

- There will be an estimated fee of 19-26% of remote seller tax revenues if we go through the commission taxing authority.
  - 8-10% for annual software licensing and support, 1% GIS Tax jurisdiction map maintenance, 10-15% AML staffing fee
  - That equates to over \$8,000 we would have paid in fees over the last 3 quarters for Amazon alone
- It is estimated there are over 2,400 remote sellers doing business in Alaska and even more when you take into account intrastate commerce
  - I'm unsure how the program administrators will reach out to these remote sellers to enforce code and ensure proper registration and remittance
  - There could be additional tax revenues we haven't tapped into that can be enforced by the taxing authority
  - The threshold requiring registration with the commission is \$100,000 in sales per year or 100 transactions per year (state-wide)
  - Current remote sellers will need to register and remit directly to the commission
- We have the opportunity to join the commission at any time, but the earlier it is done, the more input we have in the process

I need to digest all the info and understand what that looks like for our sales tax code & processes. Until then, I don't have a strong recommendation either way, but I do think we need to change code due to these developments. I've attached SMC Chapter 4 with highlighted areas for possible edits, as well as the agreement and code drafted by the working group for the Commission.

There is the software demo and (I believe) a session to update everyone on the progress during the AML conference. I think it would be helpful to have someone attend both events.

Thanks,



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**From:** Nils Andreassen <[nils@akml.org](mailto:nils@akml.org)>  
**Sent:** Tuesday, November 5, 2019 8:40 AM  
**Subject:** Online Sales Tax update

Hi everyone,

I wanted to update you on where we're at with the online sales tax work:

1. We've had a four communities (that I know of) pass a resolution signing onto the Agreement, and more coming this week – so far I have Wrangell, Wasilla, Seldovia and Juneau. We'll have 7 by Friday, I think. Be sure to let me know if you do pass something, and **have your clerk send me the resolution for our files.**
2. If you haven't already, please **RSVP for the MuniRevs demo on Monday, November 18**, from 2-4:30pm (now in the Resolution room, downstairs at the Cook)
3. We'll have a formal signing ceremony at the conference, on Thursday, November 21, at 3pm. If you've passed a resolution by then, **please plan on attending** and we'll pull the group up on stage and make a show of signing the agreement.

Question: **should we plan for a Commission meeting** that week, while we're mostly all together? I could do it Wednesday night during the reception, or Friday afternoon after the board meeting. Or we could really even just do it right after the Monday software demo. Those are the options, I think. The goal would be to review the bylaws, I think, and see if we could finalize those. We could hold board elections, if you want, and introduce the board to members on Thursday. The sooner we can get that done, the sooner we can finalize the tax code, which I'd like to accomplish in December, so that you have time in January to bring it to your council/assembly.

Nils Andreassen  
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## Chapter 4.08 SALES TAXATION

### Sections:

- 4.08.005 Definitions.
- 4.08.010 Levy of tax.
- 4.08.020 Rate of general sales tax.
- 4.08.030 Short-term rental tax.
- 4.08.040 Consideration other than cash.
- 4.08.050 Sales not divisible to avoid tax.
- 4.08.060 Exemptions from tax.
- 4.08.070 Limitations of use of tax proceeds.
- 4.08.080 Separate funds.
- 4.08.090 Duty to collect and make return.
- 4.08.100 Returns.
- 4.08.110 Penalty and interest.
- 4.08.120 Collection enforcement.
- 4.08.130 Investigative procedure.
- 4.08.140 Failure to make return--Assessment.
- 4.08.150 Selling or quitting business.
- 4.08.160 Jeopardy assessment.
- 4.08.170 Bond for payment.
- 4.08.180 Taxpayer records.
- 4.08.190 Penalties for noncompliance or fraudulent action.
- 4.08.195 Lien for tax, interest and penalty.
- 4.08.200 Period of limitation for collections.
- 4.08.210 Refund of sales taxes.

### 4.08.005 Definitions.

#### A. Definitions:

1. "Club" means professional organizations (examples are Alaska Travel Industry Assoc., Alaska Peace Officer's Assoc., Alaska Municipal League, Fraternal Order of the Eagles, Benevolent and Protective Order of the Elks).
2. "Federally recognized Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior has acknowledged to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454, [25 U.S.C. 479a](#).
3. "Over the counter sales" means any sale of a tour product as defined in this section, made directly to a customer within the municipal boundary of the Municipality of Skagway Borough for tour products originating in and returning to a point within the municipal boundary of the Municipality of Skagway Borough.
4. "Pre-sold sales" means any sale of a tour product as defined in this section, made by any agent outside of the municipal boundary of the Municipality of Skagway Borough for tour products originating in and returning to a point within the municipal boundary of the Municipality of Skagway Borough.
5. "Rents" means payments for the use of lands, buildings, apartments, offices, machinery, and equipment.
6. "Retail sale" means any sale of real or tangible personal property, including barter, credit, installment and conditional sales, for any purpose other than resale in the regular course of business. The delivery of property in the municipality by a seller whose principal place of business is outside the municipality to a buyer or consumer, is a retail sale made within the municipality if such retailer maintains any office, distribution, or sales house, warehouse or any other place of business, or solicits business or receives orders through any agent, salesman or other type of representation within the municipality.

7. "Sale price," "price," and "gross revenue," mean the consideration, whether money, credit, rights or other property, expressed in term of money, paid, given or delivered by a buyer to a seller all without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued, and without any deduction on account of losses. Federal and state fuel taxes shall not be included in the calculation of local sales tax.
8. "Sales for resale" means the sale of tangible personal property to a buyer whose principal business is the resale of the property whether in the same or an altered form. The definition of "sales for resale" includes resellers or wholesalers of services or property whether in the same or an altered form.
9. "Seller" includes every person making sales to a buyer or consumer, renting property or performing services for consideration.
10. "Services" includes all services of every manner and description that are performed or furnished for consideration whether in conjunction with the sale of goods or not, but does not include services rendered by an employee to an employer.
11. "Tax holiday" means the exemption from paying sales tax on retail sales and the sales of services and rents made during an assembly declared "tax holiday" during the period from October 1 through March 31, of the fiscal year. The assembly may declare a tax holiday on any type of sale at its discretion.
12. "Tour operator" means any person or business who sells or supplies a tour product as defined in this section.
13. "Tour products" means any activity, or collection of activities, consisting of a transportation component by land, or sea, for the purpose of sightseeing, entertainment or interpretation, or a combination thereof. This includes but shall not be limited to bus, van or automobile tours, kayak tours, bicycle tours, horseback tours and hiking tours, river rafting or fishing and rail tours.
14. "Transportation," for purposes of this section only, means the business of conveying passengers or goods to or from locations outside of the municipal boundary of the Municipality of Skagway Borough to or from locations within the boundary of the Municipality of Skagway Borough, or from point to point within the Municipality of Skagway Borough.

(Ord. 12-24, Amended, 11/08/2012; Ord. 11-12, Amended, 07/07/2011; Ord. 11-08, Amended, 04/07/2011; Ord. 10-14, Amended, 10/21/2010; Ord. 07-08, Amended, 04/19/2007; Ord. 2001-06; Amended, 02/15/2001; Ord. 96-17 (part), Amended, 08/01/1996; Ord. 89-27, Amended, 12/07/1989; Ord. 89-2, Added, 02/16/1989)

#### **4.08.010 Levy of tax.**

A sales tax is hereby assessed and levied on the following sales, subject to the specific exemptions in Section [4.08.060](#):

- A. **All retail sales made within the municipality;**
- B. All services performed within the municipality;
- C. All rents paid for the use of real and personal property located within the municipality;
- D. The retail price of all over the counter tour sales, or tour product sales;
- E. The net price received by the tour operator who provides pre-sold tour sales discounted to third party agents for sale outside of the municipal boundary of the Municipality of Skagway Borough. The tax is to be collected and remitted by the tour operator, or their agent.

(Ord. 11-12, Amended, 07/07/2011; Ord. 96-17, Amended, 08/01/1996 and Ratified by voters 10/01/1996; Ord. 89-2, Amended, 02/16/1989; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.020 Rate of general sales tax.**

- A. Said tax is hereby levied in the amount of five percent (5%) of the gross revenues derived from all taxable transactions except those subject to the hotel room tax. The tax is levied in accordance with the following schedule for the months of April through September of the calendar year:

Sales Price	Amount of Tax
Under \$0.19	None
\$0.20 to 0.29	\$0.01
\$0.30 to 0.49	\$0.02

Sales Price	Amount of Tax
\$0.50 to 0.69	\$0.03
\$0.70 to 0.89	\$0.04
\$0.90 to 1.09	\$0.05
\$1.10 to 1.29	\$0.06
\$1.30 and over continues on same scale.	

B. Said tax is hereby levied in the amount of three percent (3%) of the gross revenues derived from all taxable transactions except those subject to the hotel room tax. The tax is levied in accordance with the following schedule for the months of January through March and October through December of the Calendar year:

Sales Price	Amount of Tax
Under \$0.16	None
\$0.17 to 0.49	\$0.01
\$0.50 to 0.83	\$0.02
\$0.84 to 1.16	\$0.03
\$1.17 to 1.49	\$0.04
\$1.50 to 1.83	\$0.05
\$1.84 to 2.16	\$0.06
\$2.17 and over continues on same scale.	

C. **The taxability of a sale of goods is determined by the point of sale.** The taxability of a service performed or rental made is determined by the place where the service is performed or the rental property is located.

(Ord. 07-21, Amended; 08/16/2007, Ratified by Voters 10/02/2007; Ord. 89-2, Amended, 02/16/1989; Ord. 87-19, Repealed & Replaced, 11/05/1987; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### 4.08.030 Short-term rental tax.

A. A short-term rental tax upon overnight accommodation rentals of less than thirty (30) consecutive days is hereby assessed and levied in the amount of eight percent (8%) of the gross revenues on all such rents, and on all services provided in connection therewith.

B. Overnight accommodation rentals which continue for thirty (30) or more consecutive days shall be subject to sales tax, instead of short-term rental tax, on or after the thirtieth consecutive day. Overnight accommodation rentals which are less than thirty (30) consecutive days shall be subject to the short-term rental tax even if the room or rooms were originally taken with the intent to use or occupy for thirty (30) or more consecutive days.

C. In this section, "overnight accommodation" shall mean a room, group of rooms, or building in which someone may live or stay and does not include recreational vehicle parks or camping areas.

D. Per Section [4.08.090](#), it is the duty of the person or entity furnishing such rentals to collect the tax from the purchaser or consumer and make a return thereof to the borough. Every person or entity with an obligation to collect and remit taxes to the municipality under this chapter but who neglects, fails, or refuses to do so shall be liable for and pay the tax.

(Ord. 18-18, Amended, 10/18/2018; Ord. 91-27, Amended, 08/15/1991; Ord. 91-12, Amended, 06/06/1991; Ord. 89-2, Amended, 02/16/1989; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### 4.08.040 Consideration other than cash.

Barter or exchanges are not exempt from sales taxation. When sales, rentals or services are provided for other than cash, the price shall be computed in dollars and cents on the reasonable value of the sale, rental or service.

(Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### 4.08.050 Sales not divisible to avoid tax.

The sales price of all items purchased or delivered at the same time shall be added together and the tax levied on the aggregate amount thereof.

(Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.060 Exemptions from tax.**

A. The following transactions are exempt from the tax herein levied:

1. All sales to a bona fide retailer when the items are purchased by him for resale in the ordinary course of business. In this connection, a retailer is one who regularly stocks merchandise for resale, displays the same to the public and holds himself out as regularly engaged in the business of selling such products either during a regular season or throughout the year direct to the consumer;
2. Sales and the gross receipts derived there from when the aggregate amount from a single transaction amounts to less than twenty-five cents (\$.25);
3. Grocery store sales to borough residents who are sixty-five (65) years of age, or older, and who display at the time of purchase an identification card issued by the municipality and where such purchases are solely for the use of the resident and spouse;
4. Casual and isolated sales made and services performed which are not in the regular course of business;
5. Salaries and wages received by an employee;
6. Dues or fees to clubs, labor unions or fraternal organizations;
7. Remuneration for services and materials, including caskets, used or furnished for funerals;
8. Sales of goods, services and rentals to a buyer or made by a seller who is organized and administered solely by an organization that has obtained an exemption certificate from both the Internal Revenue Service pursuant to Internal Revenue Service Section 501(c)(3) and the Municipality of Skagway, except that no exemption shall be allowed where such organizations are also engaged in any business for profit or savings, or competing with other persons or businesses engaged in the same or similar business.
9. Proceeds derived from the transportation of students to and from grade or high schools in motor or other vehicles;
10. Proceeds derived from carrier sales made directly to consumers or users of, or advertisers in, newspapers or other periodicals;
11. Sales of insurance and surety bonds;
12. Gross receipts or proceeds derived from medical or dental services rendered, including hospital services and from the sale of medicinal preparations when prescribed in writing by any licensed practitioner;
13. Gross receipts or proceeds derived from sales to the United States Government, the state of Alaska or any of its political subdivisions, and the Municipality of Skagway; or from sales by the United States Government and the state;
14. Proceeds derived from sales or services which the municipality is prohibited from taxing under state or federal law;
15. Sales of heating fuels for use in space heating;
16. Proceeds from providing transportation by air, water or land;
17. Proceeds of sales of rental property. This exemption does not apply to commissions of real estate agents and brokers, which remain subject to the tax on services;
18. All sales for consumption outside the municipality in response to mail order requests originating outside the Municipality of Skagway Borough limits;
19. Contracts and subcontracts for new construction and reconstruction services on projects and structures for industrial, commercial, residential, and nonprofit purposes;

20. Wharfage charges and charges for freight handling and cargo handling on docks. Warehouse, storage and other services or fees are taxable;
21. Purchases made with food stamp coupons; or food purchases under the Federal Special Supplemental Food Program for Women, Infants and Children (WIC);
22. Sales of building and construction materials exceeding two thousand five hundred dollars (\$2,500.00) for use on any one construction project approved by a municipal building permit and paid for by any one purchaser during any twelve (12) consecutive months period.
- a. Purchaser may, at his discretion, pay at the time of building permit approval all sales taxes due on purchases of two thousand five hundred dollars (\$2,500.00) of building and construction materials for use on any one construction project. The purchaser will then be issued a numbered sales tax exemption permit which will exempt purchaser from paying sales tax on the purchase of materials on that project for the year. The permit number must be shown to vendor by purchaser on all purchases covered by this section and be recorded on all sales tickets at time of purchase of materials.
  - b. For the purposes of this section, "building and construction materials" are defined as any material which is incorporated into the structure of a building or other improvement and is also classified as real property for tax purposes by the borough assessor.
23. Sales of all products, services and rents sold in Skagway during "tax holidays" periodically declared by the borough assembly by resolution during the period from October 1 through March 31 of the fiscal year. The assembly may declare a tax holiday on sales or services or rents solely in its discretion, and may exclude application of any tax holiday to sales or services or rents in its sole discretion.
24. Fees associated with sales and services by banks, savings and loan associations, credit unions and investment banks. This exemption does not include rental of bank owned real property.
25. Sales for purchase of foods qualified under the Federal Food Stamp program. The exemption does not apply to meals prepared in restaurants, cafes, inns or other dining establishment. The exemption does not apply to non-food items purchased. Businesses eligible to exempt sales tax on foods must meet one of the criteria below:
- a. Be registered with the USDA Food Stamp Program; or
  - b. More than one-half (50%) of the total dollar amount of all things (food, nonfood, gas and services) sold in the store must be from the sale of eligible staple foods.
    - (i) Staple foods are: meat, poultry or fish; bread or cereal; vegetables or fruits; and dairy products. Staple foods do not include accessory foods such as coffee; tea; cocoa; soda; non-carbonated drinks such as sports drinks, punches, and flavored waters; candy; condiments; spices; hot foods; or, prepared foods like sandwiches or salads.
26. Retail sales, services, and rentals of real or tangible personal property to or by a federally recognized Indian tribe. This exemption does not apply to the following:
- a. Sales of pull-tab games by federally recognized Indian tribes.

(Ord. 12-24, Amended, 11/08/2012; Ord. 11-12, Amended, 07/07/2011; Ord. 10-14, Amended, 10/21/2010; Ord. 08-08, Amended, 03/06/2008; Ord. 07-21, Amended, 08/16/2007; Ord. 04-15, Amended, 08/19/2004; Ord. 01-16, Amended, 05/03/2001; Ord. 01-06, Amended, 02/15/2001; Ord. 96-17 (part), Amended, 08/01/1996; Ord. 95-3 §§ 1- 3, Amended, 03/16/1995; Ord. 89-2, Amended, 02/16/1989; Ord. 88-26, Amended, 10/20/1988; Ord. 88-24, Amended, 09/15/1988; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.070 Limitations of use of tax proceeds.**

A. The proceeds of the tax hereby levied, except the hotel room tax, shall be used for principal and interest on general obligation bond issues. At the beginning of each fiscal year, a sum sufficient to pay the known or anticipated installments on general obligation bonded indebtedness shall be set aside for this purpose. Any remaining funds available after the sum set aside for general obligation bond indebtedness shall be distributed as follows:

1. A percentage of any remaining funds may be appropriated by the assembly for the purpose of school funding.
2. A percentage of any remaining funds, after allocation for repayment of general obligation bonds and/or school funding, may be

appropriated by the assembly for the purpose of medical service delivery funding.

3. A percentage of any remaining funds, after allocation for repayment of general obligation bonds, school funding and medical service delivery, may be appropriated by the assembly for equipment replacement reserves. This percentage is to be set annually and included in the budget ordinance.

4. A percentage of any remaining funds may be allocated for special and capital projects.

5. Thereafter any unused remainder may be allocated to the general fund or other funds for services responding to visitor impact including, but not limited to emergency services, clinic and museum. Such allocation shall not exceed the equivalent of 4.5 mills.

B. The established sales tax fund shall be treated as follows:

1. The interest income generated by investment of the established sales tax fund account during any fiscal year shall be transferred to the municipality's general fund account at the beginning of the following fiscal year. Interest income shall include dividends paid by stocks and mutual funds, but shall not include return of principal payments or capital gains payments, whether realized or unrealized.

2. The principal of the established sales tax fund may be appropriated by the assembly for the purpose of planning, design and construction of capital improvements.

C. Proceeds of the eight percent (8%) **hotel room tax** hereby levied shall be used, in such amounts as the voters by referendum determine from time to time, to fund the promotion of tourism and the provision of tourism-related facilities. The surplus, if any shall be allocated to the tourism fund, which shall be maintained as a separate fund.

(Ord. 13-19, Amended, 06/20/2013; Ord. 11-12, Amended, 07/07/2011; Ord. 07-15, Amended, 06/21/2007; Ord. 07-09, Amended, 04/19/2007; Ord. 06-14, Amended, 06/01/2006; Ord. 05-14, Amended, 06/02/2005; Ord. 04-10, Amended, 06/03/2004; Ord. 03-15, Amended, 05/15/2003; Ord. 2002-11, Amended, 05/23/2002; Ord. 97-09, Amended, 05/15/1997; 96-13, Amended, 06/06/1996; 92-15, (part) Added, 06/18/1992; Ord. 87-19, Amended, 11/05/1987; Ord. 86-02, Amended, 01/15/1986; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.080 Separate funds.**

Proceeds of each category of tax levied hereunder (the general sales tax and the **hotel room tax**) shall be maintained as separate funds.

(Ord. 96-13 (part), Amended, 06/06/1996; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.090 Duty to collect and make return.**

A. The tax is hereby assessed and levied upon the purchaser or consumer but it is the duty of the retailer or person furnishing such rentals or services to collect the tax from the purchaser or consumer and make a return thereof to the borough clerk as herein stated. Every person with an obligation to collect and remit taxes to the municipality under this chapter, but who neglects, fails or refuses to do so, shall be liable for and pay the tax himself.

B. The sellers or furnishers of the services shall add the tax imposed under this chapter to the sales price or charge, and when so added such tax shall constitute a debt from the purchaser or consumer to the seller or furnisher until paid, and shall be recoverable at law in the same manner as other debts.

C. In specific instances where the tenant is occupying space in a government owned building or government owned land, it is the tenant's obligation to pay the sales tax directly to the municipality, unless the landlord is willing to voluntarily receive the tax payment and remit it to the municipality.

(Ord. 16-14, Amended, 07/21/2016; Ord. 11-12, Amended, 07/07/2011; Ord. 07-16, Amended, 06/21/2007; Ord. 87-8, Amended, 07/09/1987; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.100 Returns.**

A. The borough clerk shall provide appropriate forms for use of taxpayers in making returns of the taxes payable under this chapter. Every person, firm or corporation making such sales or providing such rentals or services as are taxable hereunder shall furnish the **borough clerk** with a completed return containing such information as is necessary to fill in or complete the forms supplied by the **borough clerk** including the total sales price collected. Should the payment be returned due to non-sufficient funds, the taxpayer shall be required to provide certified funds to fulfill his/her obligation.

B. Quarterly Returns. Returns shall be made once each quarter for the sales made and rentals or services furnished during the preceding

quarter. When such sales, rentals or services are made on credit, for the purpose of making a return and paying the tax, such sales shall be considered made or rentals or services furnished during the quarter in which payment is received unless the taxpayer elects to make his/her returns on an accrual basis.

C. Monthly Returns. Every person, firm or corporation who has failed to file a quarter return when due shall be scheduled to file monthly returns. The following conditions shall apply to every person, firm or corporation who has not filed his/her sales tax return or remitted the amount due including penalty and interest:

1. If a person, firm or corporation is more than 30 days delinquent in filing a quarterly sales tax return, that person, firm or corporation shall be placed on a 24 month probation and shall be required to file monthly returns.
2. A list of the name of every person, firm or corporation who has not filed his/her sales tax return and/or remitted the sales tax when due shall be published in the local newspaper.
3. A monthly return shall be required and payment due shall be made no later than the 10th of the following month.
4. Every person, firm or corporation who has been delinquent for 3 or more months during a calendar year shall be on probation for a 24 month period. Upon completion of the 24 month period if no delinquencies have reoccurred that person, firm or corporation may file quarterly returns.

(Ord. 11-12, Amended, 07/07/2011; Ord. 07-08, Amended, 04/19/2007; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.110 Penalty and interest.**

In the event a return is not made or the tax is not paid for any quarter within the following calendar month, a penalty of ten percent (10%) of such tax as is unpaid shall be added to such tax for the first month of delinquency or any fraction thereof, and an additional ten percent (10%) shall be added for each additional month of delinquency or fraction thereof, until a total penalty of thirty percent (30%) has accrued. Interest at the rate of fifteen percent (15%) per annum from the date of delinquency until paid shall also accrue. Such penalty and interest shall be collected in the same manner as the tax. If the last day of the calendar month falls on a weekend or holiday, the sales tax return shall be due no later than the next business day.

(Ord. 11-12, Amended, 07/07/2011; Ord. 07-08, Amended, 04/19/2007; Ord. 86-2, Amended, 01/15/1986; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.120 Collection enforcement.**

A. In the event that the delinquent tax has not been paid in full, including penalty and interest, by the end of the third month of delinquency, the **borough clerk** shall file **and action suit** for collection of the tax in full, including penalty, interest and court costs. Nothing in this section shall bar the filing of any such action later than such time, nor shall anything in this section constitute a defense to any such suit filed after such time.

B. Every person, firm or corporation who is delinquent in paying his/her sales tax obligation shall be considered in violation of the terms and conditions of his/her business license and corrective action may be initiated per SMC [5.01.050](#).

(Ord. 11-24, Amended, 10/20/2011; Ord. 11-12, Amended, 07/07/2011; Ord. 07-08, Amended, 04/19/2007; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.130 Investigative procedure.**

A. The borough assembly shall from time to time designate a person as borough sales tax inspector, to make investigations and inspections of those books and records of the persons, firms and corporations (hereinafter termed "taxpayers") who are liable for remittance of taxes under this chapter.

B. The sales tax inspector is authorized and empowered to make inspections from time to time of all the relevant books and records pertaining to purchases and sales, including services and rents, made or performed by persons who are liable for remittance of the tax levied under this chapter. The sales tax inspector is hereby granted the right to inspect all such books and records, including the records of purchases made by retailers from wholesalers or other retailers, the ledger accounts of customers of the taxpayers, and all other books and records of the taxpayers which would in any way tend to prove or reveal information concerning the tax liability of the taxpayers under this chapter. It shall be the duty of every person engaged in business in the municipality to allow the sales tax inspector to examine such books and records during regular business hours at such times as the sales tax inspector may require. If the keeper of such books and records denies the sales tax inspector access to them, then the sales tax inspector shall seek assistance of a court (e.g., inspection warrant, or deposition notice accompanied by a subpoena to produce the records) to enable inspection of the books and records.

C. If the sales tax inspector finds discrepancies in favor of the municipality between the sales reported to the borough clerk and the sales which appear to have been made by any taxpayer, the **borough clerk** shall demand in writing that the taxpayer forthwith make an amended return showing the correct amount of sales or rentals made and services performed for each month for which any discrepancy appears, and to pay the taxes due the municipality within five (5) days from receipt of the demand by the **borough clerk**. Unless a taxpayer upon who such demand is made makes such returns and pays the taxes due the municipality with five (5) days from receipt of demand from the **borough clerk**, the **clerk** shall report the facts in full to the assembly. The **clerk** and sales tax inspector shall keep confidential all facts learned as a result of such investigations until such time as the same are reported to the assembly.

D. In the event of a dispute between the taxpayer and the **borough clerk** as to the amount of tax due or as to the applicability of any exemption listed in Section [4.08.060](#), the taxpayer may, within five (5) days of the receipt of the demand made upon him/her for the filing of amended returns and the payment of such taxes, demand a hearing before the borough assembly of his/her tax liability. In such event, the borough assembly shall notify the taxpayer of the time and place at which such hearing will be held. The borough assembly shall, after receiving a report from the borough clerk of the delinquent taxes and after affording the taxpayer any opportunity for such hearing, take such action at law as is necessary to collect any taxes which the borough assembly finds to be delinquent, including penalty, interest and court costs. The hearing shall be conducted informally and shall not be subject to the Alaska Rules of Evidence.

(Ord. 11-24, Amended, 10/20/2011; Ord. 11-12, Amended, 07/07/2011; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.140 Failure to make return--Assessment.**

A. **Assessment by Municipality.** If any person obligated to collect and remit taxes under this chapter fails to make a return as provided by this chapter, or makes a grossly incorrect return, or a return that is false or fraudulent, the borough manager shall make an estimate of the taxable transactions during the taxable period and assess the tax, plus penalties. The borough manager shall give the taxpayer ten (10) days' notice in writing concerning the proposed assessment and requiring the taxpayer to appear before him with such books, records and papers as he requires relating to the business for the taxable period. The borough manager may require the taxpayer or his employees or agents to give testimony or to answer interrogatories under oath concerning any information relevant to the assessment of the proper amount of taxes due the municipality for that period or the failure to make any return thereon as provided in this chapter. If any taxpayer fails to make any return or refuses to appear and answer questions within the scope of an investigation relating to his legal duties under this chapter, the borough manager may make the assessment based upon information available to him. The assessment shall be presumed to be correct unless set aside by a court of law.

B. **Protest by Taxpayer.** If the taxpayer protests his liability (or the amount thereof) on an assessment under subsection A which has become final, he shall pay the tax under written protest setting forth the basis for the protest. No action for a refund may be maintained nor may a defense to non payment be maintained in a civil action unless the amount in the dispute has been paid by the taxpayer under written protest filed at or before the time of payment.

(Ord. 11-12, Amended, 07/07/2011; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.150 Selling or quitting business.**

If any person liable for any tax, penalty or interest levied under this chapter sells out his business or stock of goods or quits the business, he shall make a final return and payment within fifteen (15) days after the date of selling or quitting the business. The return shall include any sales made at retail during liquidation. His successors or assigns, if any, shall withhold sufficient purchase money to cover the amount of taxes, penalties and interest due and unpaid until the former owner produces a receipt from the borough clerk showing that they have been paid or a certificate stating that no taxes, penalties or interest are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as provided in this section, he shall be personally liable for the payment of the taxes, penalties and interest due and unpaid on account of the operation of the business by the former owner.

(Ord. 11-12, Amended, 07/07/2011; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.160 Jeopardy assessment.**

If the borough manager deems that the collection of any tax required to be collected under this chapter may be jeopardized by delay, he shall make an assessment of the tax required to be collected and shall mail or issue a notice of the assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy, including penalties. In the case of a tax for the current period, the borough manager may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated, and the tax shall be immediately due and payable whether or not the time otherwise allowed by law for filing a return and

paying the tax has expired. Assessments provided for in this section shall become immediately due and payable, and if any tax, penalty or interest is not paid upon demand of the borough manager, he shall proceed to collect it by legal process or, in his discretion, he may require the taxpayer to file a bond sufficient to protect the interest of the municipality.

(Ord. 11-12, Amended, 07/07/2011; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.170 Bond for payment.**

The borough manager, if he finds it necessary or advisable in order to secure the collection of the tax levied by this chapter, may require any person subject to the tax to file with him a bond of a surety company authorized to do business in the state as surety, in such reasonable amount as the borough manager fixes, to secure the payment of any tax, penalty or interest due or which may become due from the person. In lieu of a bond, securities approved by the borough manager may be deposited with the borough clerk, which securities shall be kept in the custody of the borough clerk, and shall be sold by the borough clerk at the request of the borough manager at public or private sale, without notice to the depositor thereof if necessary in order to recover any tax, penalty or interest due the municipality under this chapter. Upon the sale, the surplus, if any above the amounts due under this chapter, shall be returned to the person who deposited the securities.

(Ord. 11-12, Amended, 07/07/2011; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.180 Taxpayer records.**

Every person with an obligation to collect and remit taxes to the municipality under this chapter shall keep and preserve suitable records of his business transactions as necessary to a determination of the amount of tax due hereunder. Such records shall be preserved for at least three (3) years following the end of the calendar year in which the taxable transactions occurred.

(Ord. 11-12, Amended, 07/07/2011; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.190 Penalties for noncompliance or fraudulent action.**

A. Any person subject to the provisions of this chapter who fails or refuses to furnish any return required in this chapter, or fails or refuses to furnish a supplemental return or other data required by the municipality, or who makes a false or fraudulent return with intent to evade the tax levied in this chapter, or who makes a false or fraudulent claim for refund is guilty of an infraction, and is subject to a fine of five hundred dollars (\$500.00).

B. In the case of a fraudulent return, where intent to defraud the municipality of any tax due under this chapter has been found by a court, the taxpayer shall be subject to a civil penalty of fifty percent (50%) of the proper tax, in addition to any other civil penalties imposed under this chapter or criminal penalties imposed by a court.

(Ord. 11-24, Amended, 10/20/2011; Ord. 11-12, Amended, 07/07/2011; Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.195 Lien for tax, interest and penalty.**

A. The tax, interest and penalty imposed under this chapter in addition to the lien filing fee under subsection B of this section shall constitute a lien in favor of the municipality upon assets, including all real and personal property, of the seller who had the legal obligation to collect and remit the sales tax which is delinquent. The lien arises upon delinquency and continues until the liability for the amount is satisfied. When recorded, a lien authorized under this section has priority over other liens except those for property taxes and special assessments.

B. Fees for the filing and releasing of liens shall be set by the borough assembly by resolution from time to time to reflect the administrative costs of processing such liens.

(Ord. 11-12, Amended, 07/07/2011; Ord. 07-08, Amended, 04/19/2007; Ord. 89-2, Added, 02/16/1989)

#### **4.08.200 Period of limitation for collections.**

The taxes imposed by this chapter shall be assessed within three (3) years from December 31st of the year in which the taxes become due and payable; but in the case of a false or fraudulent return with intent to evade payment of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed or proceedings filed in court for the collection of such taxes begun without assessment, at any time within six (6) years from December 31st of the year in which the taxes become due and payable.

(Ord. 84-25, Repealed & Replaced, 11/08/1984)

#### **4.08.210 Refund of sales taxes.**

An action may be brought by a taxpayer for recovery of sales taxes originally paid under written protest; and the refund, if applicable, shall include the amount in excess of that determined to be owed, plus interest thereon at eight percent (8%) per year, plus refund of any penalty

assessed. A claim for sales tax refund filed after one (1) year following the due date of the tax is forever barred.

(Ord. 84-25, Repealed & Replaced, 11/08/1984)

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The Skagway Municipal Code is current through Ordinance 19-14, passed October 3, 2019.

Disclaimer: The borough clerk's office has the official version of the Skagway Municipal Code. Users should contact the borough clerk's office for ordinances passed subsequent to the ordinance cited above.

Municipality Website: <http://www.skagway.org/>

Municipality Telephone: (907) 983-2297

[Code Publishing Company](#)

# Alaska Intergovernmental Remote Seller Sales Tax Agreement

FINAL

October 11, 2019

## **Alaska Intergovernmental Remote Seller Sales Tax Agreement**

This Agreement is made and entered into by the signatories representing Alaska's cities and boroughs to enable them to implement single-level, statewide administration of remote sales tax collection and remittance. The provisions of the Agreement do not apply to administration and collection of sales taxes for the sales of goods and services originating from within the boundaries of a member municipality nor does this Agreement restrict how a member municipality administers and collects sales tax on such sales, nor on sales made by those retailers with a physical presence in the municipality. The authority to set rates and exemptions is maintained by the member municipality.

### **Article I. Background Principles.**

1. The signatories wish to enable local governments to benefit from opportunities for collection of existing sales tax on sales made by remote sellers. Remote sellers are sellers who sell, often through the internet, products or services in a taxing jurisdiction without having a physical presence in the taxing jurisdiction.
2. The collection of remote sales tax provides a level playing field for local businesses and strengthens the ability of local governments to provide public services and infrastructure.
3. The signatories are particularly mindful of the specific holding in, and implications of, the Supreme Court's *South Dakota v. Wayfair* decision, which provides guidance relative to nexus and the legal defensibility of a single-level statewide administration that reduces or removes potential burdens to interstate commerce.
4. Alaska's local governments have the authority to enter into intergovernmental agreements and applicable taxing authority has been delegated to organized boroughs and cities.
5. The signatories desire to establish an intergovernmental entity to enable cooperative centralized administration of sales tax collection, remittance, and enforcement on sales made by remote sellers.

### **Article II. Purpose.**

The purpose of this Agreement is to:

1. Enable cooperative centralized administration of sales tax collection, remittance, and enforcement on sales made by remote sellers using a single statewide intergovernmental entity;
2. Provide for and promote reasonable uniformity and compatibility in significant components of local sales tax levy and collection on sales made by remote sellers and marketplace facilitators in order to facilitate streamlined joint administration; and
3. Facilitate taxpayer and tax collector convenience and compliance in the filing of tax returns, the payment of tax, and in other phases of tax administration of sales made and services provided by remote sellers and marketplace facilitators.

### **Article III. Definitions.**

As used in this Agreement:

1. “Commission” means the Alaska Remote Seller Sales Tax Commission established pursuant to this Agreement.
2. “Local Government” means any home rule, first class, or second class borough, or any home rule, first class, or second class city, or unified municipality in Alaska.
3. “Member” means a Local Government signatory to this Agreement.
4. “Remote seller” means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity that sells property or products or performs services in the State of Alaska or a taxing municipality in the state, using the internet, mail order, or telephone, without having a physical presence in the state or taxing municipality.
5. “Sales tax” means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of property or the rendering of services measured by the price of the property transferred or services provided.
6. “Marketplace facilitator” means a person that provides for sellers a platform to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller’s products or services (excluding lodging and rentals) through a physical or electronic marketplace operated by the person, and engages:
  - a. Directly or indirectly, through one or more affiliated persons in any of the following:
    - i. Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
    - ii. Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;
    - iii. Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or
    - iv. Software development or research and development activities related to any of the activities described in (b) of this subsection (6), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person;
  - b. In any of the following activities with respect to the seller's products:
    - i. Payment processing services;

- ii. Fulfillment or storage services;
- iii. Listing products for sale;
- iv. Setting prices;
- v. Branding sales as those of the marketplace facilitator;
- vi. Order taking;
- vii. Advertising or promotion; or
- viii. Providing customer service or accepting or assisting with returns or exchanges.

#### **Article IV. The Commission.**

##### **1. Organization and Management.**

- a. The Alaska Remote Seller Sales Tax Commission (the “Commission”) is hereby established as an intergovernmental entity in the state of Alaska. It will be comprised of one designated representative from each Member, who shall have the authority to act on the Member’s behalf.
- b. Each Member will be entitled to one vote.
- c. To assist conducting business when the full Commission is not meeting, the Commission will annually elect a Board of Directors of seven members, including officers. The Board of Directors will act subject to the provisions of this Agreement and as provided in the bylaws of the Commission, as ratified by the members.
- d. No action will be binding unless approved by a majority of the Directors present at a meeting.
- e. The Commission will adopt an official logo.
- f. The Commission will hold an annual meeting rotating the location of the meeting each year, with telephonic participation provided for, in addition to scheduled regular meetings and special meetings as provided by its bylaws. Notices of special meetings must include the reasons for the meeting and the items to be considered.
- g. The Commission will elect annually, from among its members, a Chairman, a Vice Chairman, and a Secretary/Treasurer. The bylaws of the Commission shall provide for nomination and election of officers.
- h. The Commission will contract at formation for support and administrative

functions with the Alaska Municipal League (AML). The Executive Director of the AML will serve as a liaison between the Commission and AML and may appoint necessary staff support. This provision will be revisited within three years of legal formation of the Commission.

- i. The Commission may contract for supplies and professional services, and delegates to AML the same ability on its behalf.
- j. To carry out any purpose or function, the Commission may accept and utilize donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any Member or governmental entity.
- k. The Commission may establish one or more offices for the transacting of its business. Upon formation, its registered office and place of business will be the Alaska Municipal League at One Sealaska Plaza, Suite 200, Juneau, AK 99801.
- l. The Members will adopt the initial bylaws of the Commission. The Commission will make its bylaws easily accessible for Members and prospective members. The power to adopt, alter, amend or repeal bylaws is vested in the Board of Directors unless it is reserved to the Members per the bylaws. The bylaws shall contain provisions for the regulation and management of the affairs of the Commission not inconsistent with this Agreement.
- m. The Commission will provide annual reports to its members covering its activities for the preceding fiscal year. The Commission may make additional reports.

## 2. Committees.

- a. In furtherance of its activities, the Commission may establish advisory and technical committees by a majority vote of the membership body. Membership on a technical committee, may include private persons and public officials. Committees may consider any matter of concern to the Commission, including issues of special interest to any member and issues pertaining to collection of sales tax on behalf of members.
- b. The Commission may establish additional committees by a majority vote of the membership or Board of Directors as its bylaws may provide.
- c. Committees may not take any action but may recommend action to the Board of Directors for consideration.

## 3. Powers.

In addition to powers conferred elsewhere in this Agreement and in the bylaws, the Commission may:

- a. Study federal, state and local sales tax systems, and particular types of state and local taxes.

- b. Develop and recommend proposals to promote uniformity and compatibility of local sales tax laws with a view toward encouraging the simplification and improvement of local tax law and administration.
- c. Compile and publish information to support and assist members in implementing the Agreement or assist taxpayers in complying with local government sales tax laws.
- d. Do all things necessary and incidental to the administration of its functions pursuant to this Agreement, including:
  - i. Sue and be sued.
  - ii. Administer provisions of uniform sales tax ordinances pursuant to authority delegated by Members
- f. The Commission may create and adopt policies and procedures for any phase of the administration of sales tax collection and remittance in accordance with this Agreement and the Commission's bylaws, including delegated authority to administer taxation or prescribing uniform tax forms. Prior to the adoption of any policy, the Commission will:
  - 1. As provided in its bylaws, hold at least one meeting after due notice to all members and to all taxpayers and other persons who have made timely requests to the Commission for advance notice of its policy-making proceedings.
  - 2. Afford all affected members and interested persons an opportunity to submit relevant written comments, which will be considered fully by the Commission.
- g. The Commission will submit any policy adopted by it to the designated representative of all Members to which they might apply. Each such Member will in turn consider any such policy for adoption in accordance with its own laws and procedures.
- h. Amend this Agreement by majority vote of the Members.

#### 4. Finance.

- a. At least 90 days prior to the start of a new fiscal year, the Board of Directors will adopt a budget of its estimated expenditures for the upcoming fiscal year and submit to Members.
- b. The Commission will follow a July 1 to June 30 fiscal year.
- c. The Commission's budgets must contain specific recommendations for service fees built into statewide administration. Service fees will account for direct staff and software costs, and indirect costs, as justifiable to the Board of Directors.

- d. The Commission will not pledge the credit of any member. The Commission may meet any of its obligations in whole or in part with funds available to it, provided that it takes specific action to set aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it, the Commission may not incur any obligation prior to the allocation and commitment of funds adequate to meet the same.
- e. The Commission must keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission will be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission will be audited annually by a certified public accountant and the report of the audit will be included in and become part of the annual report of the Commission to Members.
- f. The accounts of the Commission will be open at any reasonable time for inspection by duly constituted officers of the Members, the State of Alaska, and by any persons authorized by the Commission.
- g. Nothing contained in this Article may be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

#### **Article V. Membership Requirements; Remote Seller Sales Tax Code.**

1. To obtain and retain full membership, the Local Government must submit either an Ordinance or Resolution authorizing entry into the Agreement, including to:
  - a. Designate the individual at the municipality that may execute initial binding documents on behalf of the municipality and who will be the Member's representative on the Commission.
2. Once the Commission adopts its bylaws and adopts a uniform Remote Sellers Sales Tax Code, members must submit an Ordinance or Resolution that:
  - a. Delegates remote seller sales tax registration, exemption certification, collection, remittance, and audit authority to the Commission.
  - b. Within one hundred twenty (120) days, adopts, by reference or otherwise, the Remote Seller Sales Tax Code in its entirety as it pertains to collection of sales tax from remote sellers and marketplace facilitators. The Remote Seller Sales Tax Code is provided as "Addendum A".
3. To retain full membership status, changes made to the Agreement or Code should be ratified by the Member within one hundred twenty (120) days of the date the Commission adopts the change.
4. The Member must provide notice of tax or boundary changes to the Commission and must

assure the Commission of the accuracy of rates and exemptions. Rate and exemption changes will take effect within thirty (30) days of the date the Commission receives notice of the tax or boundary change.

## **Article VI. Sales Tax Collection and Administration.**

### **1. Collection; Registration; Remittance.**

- a. Every remote seller and marketplace facilitator meeting the Threshold Criteria of one hundred thousand (\$100,000) in annual sales or 100 annual transactions occurring in Alaska during the current or previous calendar year, shall collect sales taxes from the buyer at the time of sale or service and shall transmit the sales taxes collected to the Commission on a monthly or quarterly basis.
- b. The Commission will remit and report to Members by the last business day of the month.
- c. A remote seller or marketplace facilitator meeting the Threshold Criteria shall apply for a certificate of sales tax registration within thirty (30) calendar days of the adoption of this Remote Seller Sales Tax Code and/or within thirty (30) calendar days of meeting the threshold, whichever occurs later. Registration shall be to the Commission on forms prescribed by the Commission as set out in the remote seller sales tax code.
- d. Upon receipt of a properly executed application, the Commission shall issue the applicant a certificate of registration, stating the legal name of the seller, the primary address, and the primary sales tax contact name and corresponding title. A list of registered sellers in good standing shall be distributed to Members, made public and available on the Commission's webpage.

### **2. Returns; Confidentiality.**

- a. The Commission will provide all sales tax return information to the taxing jurisdiction, consistent with local tax codes.
- b. All returns, reports and information required to be filed with the Commission under this Code, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:
  - i. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
  - ii. The person supplying such returns, reports and information; or
  - iii. Persons authorized in writing by the person supplying such returns, reports and information.

### 3. Title; Penalty and Interest; Overpayment.

- a. Upon collection by the seller, title to the sales tax vests in the Commission and the member on whose behalf the original tax arose. The Commission shall act as a third-party trustee and remit taxes collected on behalf of the member no later than thirty (30) days after each filing deadline.
- b. The Remote Sellers Sales Tax Code shall establish the per annum interest rate and any applicable penalties for late or non-compliant remote sellers.
- c. Upon request from a buyer or remote seller the Commission shall provide a determination of correct tax rate and amount applicable to the transaction. In the case of an overpayment of taxes, the remote seller shall process the refund and amend any returns accordingly.

### 4. Audit; Compliance and Enforcement.

- a. The Commission shall have sole audit authority and will make final determinations regarding: (1) whether a remote seller or marketplace facilitator meets Threshold criteria; (2) the accuracy of returns filed by a remote seller or marketplace facilitator with the Commission; and (3) whether a remote seller or marketplace facilitator filing returns with the Commission is in compliance with collection and remittance obligations.
- b. The Commission shall have authority to enforce issues relating to the Remote Sellers Sales Tax Code including, but not limited to, the collection of late fees and penalties, and filing of civil suits and injunctions.

## **Article VII. Entry into Force and Withdrawal.**

1. This Agreement will be in force and effective when formally approved by any seven signatories and will terminate if membership falls below seven.
2. Any Member may withdraw from this Agreement through ordinance or resolution rescinding signatory action and giving notice to the Commission of the effective date of the ordinance, with a minimum of 30 days' notice. Withdrawal will not affect any liability already incurred by or chargeable to a Member prior to the effective date of such withdrawal. The obligations of the Commission to remit and report remain until no longer necessary.

## **Article VIII. Effect on Other Laws and Jurisdiction.**

Nothing in this Agreement may be construed to:

1. Affect the power of any local government to fix rates or tax exemptions, except that all members must adopt and implement the Commission's common definitions and tax code

changes or demonstrate parity or non-applicability.

2. Withdraw or limit the authority of local government with respect to any person, corporation, or other entity or subject matter, except to the extent that such authority is expressly conferred by or pursuant to this Agreement upon another agency or body.
3. Supersede or limit the jurisdiction of any court of the State of Alaska.

**Article IX. Construction and Severability.**

This Agreement shall be liberally construed so as to effectuate its purposes. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision is declared or held invalid by a court of competent jurisdiction, the validity of the remainder of this Agreement and its applicability to any government, agency, person or circumstance will not be affected. If any provision of this Agreement is held contrary to the charter of any member, the Agreement will remain in full force and effect as to the remaining members and in full force and effect as to the Member affected in all other provisions not contrary to charter.

**ADDENDUM A**  
**REMOTE SELLER SALES TAX CODE & COMMON DEFINITIONS**

**WHEREAS,** the inability to effectively collect sales tax on sales of property, products or services transferred or delivered into Alaska, is seriously eroding the sales tax base of communities, causing revenue losses and imminent harm to residents through the loss of critical funding for local public services and infrastructure; and

**WHEREAS,** the harm from the loss of revenue is especially serious in Alaska because, and sales tax revenues are the primary source of funding for services provided by local governments; and

**WHEREAS,** the failure to collect sales tax on remote sales creates market distortions by creating tax shelters for businesses that limit their physical presence in the taxing jurisdictions but still sell goods and services to consumers, which becomes easier and more prevalent as technology advances; and

**WHEREAS,** the failure to tax remote sales results in the creation of incentives for businesses to avoid a physical presence in the state and its respective communities, resulting in less jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the state and its cities; and

**WHEREAS,** the structural advantages for remote sellers, including the absence of point-of-sale tax collection, along with the general growth of online retail, make clear that erosion of the sales tax base is and has been occurring; and

**WHEREAS,** remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy as well as local infrastructure; and

**WHEREAS,** given modern computing and software options, it is neither unusually difficult nor burdensome for remote sellers to collect and remit sales taxes associated with sales into Alaska taxing jurisdictions; and

**WHEREAS,** due to a recent decision by the United States Supreme Court and the lack of a state sales tax it is appropriate for the municipalities to collectively amend their sales tax code to account for remote sellers who do not have a physical presence either in the State of Alaska or in a specific taxing jurisdiction, but do have a taxable connection with the State of Alaska or taxing jurisdiction; and

**WHEREAS,** this ordinance is not retroactive in its application; and

**WHEREAS,** amending local sales tax codes reflects recent changes to federal law to allow for the application of the taxing jurisdiction's sales tax code requirements to sellers without a physical presence in the State of Alaska or taxing jurisdiction and

**WHEREAS,** the intent is to levy municipal sales tax to the maximum limit of federal and state constitutional doctrines; and

**WHEREAS,** the [insert name of municipality] agrees to enter into a cooperative agreement with other local governments called the Alaska Intergovernmental Remote Seller Sales Tax Agreement (“the Agreement”); and

**WHEREAS,** the terms of the Agreement require adoption of certain uniform provisions for collection and remittance of municipal sales tax applicable to sales made by remote sellers.

NOW, THEREFORE, it is ordained as follows:

Chapter \_\_ of the [fill in name] Code of Ordinances is hereby amended by adopting a new Chapter \_\_ to read as follows:

**Sales Made by Remote Sellers:** The Alaska Remote Sellers Sales Tax Code is an ordinance prepared by the Alaska Remote Seller Sales Tax Commission and hereby adopted by reference.

DRAFT

## ALASKA REMOTE SELLER SALES TAX CODE

### XX.XX.010 – Interpretation.

- A. In order to prevent evasion of the sales taxes and to aid in its administration, it is presumed that all sales and services by a person or entity engaging in business are subject to the sales tax.
- B. The application of the tax levied under this code shall be broadly construed and shall favor inclusion rather than exclusion.
- C. Exemptions from the tax levied under this Code or from the taxing jurisdiction shall be narrowly construed against the claimant and allowed only when such exemption clearly falls within an exemption defined in this Code or the taxing jurisdiction's Code.
- D. The scope of this code shall apply to remote sellers or marketplace facilitators (except for lodging and rentals), delivering products or services to municipalities adopting this Code.

### XX.XX.020 – Title to Collected Sales Tax

Upon collection by the remote seller, title to sales tax vests in the Commission for remittance to the taxing jurisdiction. The remote seller remits collected sales tax to the Commission on behalf of the taxing jurisdiction, from whom that power is delegated, in trust for the taxing jurisdiction and is accountable to the Commission and taxing jurisdiction.

### XX.XX.030 – Imposition – Rate

- A. To the fullest extent permitted by law, a sales tax is levied and assessed on all retail sales, on all sales and services made by remote sellers where delivery is made within a local taxing jurisdiction anywhere within the State of Alaska.
- B. The tax rate added to the sale price shall be the tax rate for the taxing jurisdiction where the property sold or service rendered is received.
- C. An Address/Tax Rate Database will be made available to remote sellers, indicating the appropriate tax rate to be applied.
- D. The applicable tax rate shall be added to the sales price.
- E. When a sale is made on an installment basis, the sales tax shall be collected at the time of the sale, calculated at the sales tax rate in effect at the time of the sale.

### XX.XX.040. – Obligation to Collect Tax - Threshold Criteria—

Any seller who does not have a physical presence in the taxing jurisdiction, or marketplace facilitator, selling property or services rendered within or delivered to the taxing jurisdiction shall collect and remit sales tax in compliance with all applicable procedures and requirements of law as if the seller had a physical presence in the taxing jurisdiction, provided the seller has met one of the following criteria (the “Threshold Criteria” or economic nexus) in the previous calendar year or the current calendar year:

- 1. The seller's annual statewide gross revenue, or seller's marketplace facilitator's annual statewide gross revenue, from the sale(s) of property, product or services delivered into the state meets or exceeds one hundred thousand dollars; or
- 2. The seller, or seller's marketplace facilitator, sold property, products, or services delivered into the state in one hundred or more separate transactions.

For purposes of determining whether the Threshold Criteria are met, sellers shall include all gross revenue, including sales made through a Marketplace Facilitator.

XX.XX.050. – No Retroactive Application

The obligations to collect and remit sales tax required by this chapter are applicable at the effective date of the Alaska Remote Seller Sales Tax Code.

XX.XX.060 – Payment and Collection

Pursuant to this Code, taxes imposed shall be due and paid by the buyer to the remote seller or marketplace facilitator at the time of the sale or service, or with respect to credit transactions, at the time of collection. It shall be the duty of each remote seller making taxable sales or providing taxable services to collect the taxes from the buyer and to hold those taxes in trust for the taxing authority. Failure by the remote seller to collect the tax shall not affect the remote seller's responsibility for payment to the Commission.

XX.XX.070 – Remote Seller Registration Requirement

If a seller's or a seller's marketplace facilitator's gross statewide sales from the previous calendar year or the current calendar year meets or exceeds the Threshold Criteria set by Section XX.XX.040, the seller shall register with the Commission.

- A. A remote seller meeting the Threshold Criteria shall apply for a certificate of sales tax registration within twenty (20) calendar days of the effective date of this Remote Seller Sales Tax Code or within twenty (20) calendar days of meeting the Threshold Criteria whichever occurs second. Registration shall be to the Commission on forms prescribed by the Commission.
- B. Upon receipt of a properly executed application, the Commission shall issue the applicant a certificate of registration, stating the legal name of the seller, the primary address, and the primary sales tax contact name and corresponding title. The failure of the Commission to issue a certificate of registration does not relieve the seller of its duty to collect and remit sales tax.
- C. Each business entity shall have a sales tax registration under the advertised name.
- D. The sales tax certificate is non-assignable and non-transferable.

XX.XX.80.-Tax Filing Schedule

- A. All remote sellers or marketplace facilitators subject to this Code shall file a return on a form or in a format prescribed by the Commission and shall pay the tax due.
- B. *Filing.* Filing of sales tax returns are due monthly or quarterly.
- C. *Filing to be Continuous.* A remote seller who has filed a sales tax return will be presumed to be making sales in successive periods unless the remote seller files a return showing a termination or sale of the business in accordance with Section XX.XX.190.
- D. The completed and executed return, together with the remittance in full for the tax due, shall be transmitted to and must be received by the Commission on or before midnight Alaska time by the deadline indicated herein:

Quarter 1 (January – March)	April 30
Quarter 2 (April – June)	July 31
Quarter 3 (July – September)	October 31
Quarter 4 (October – December)	January 31

- E. If the last day of the month following the end of the filing period falls on a Saturday, Sunday or federal or state holiday, the due date will be extended until the next business day immediately following.
- F. Any remote seller holding a remote seller registration shall file a sales tax return even though no tax may be due. This return shall show why no tax is due. If the remote seller intends to continue doing business a return shall be filed reflecting no sales and a confirmation of the intent to continue doing business, and shall continue to do so each filing period until the entity ceases doing business or sells the business. If the remote seller intends to cease doing business, a final return shall be filed along with a statement of business closure.
- G. The remote seller shall prepare the return and remit sales tax to the Commission on the same basis, cash or accrual, which the remote seller uses in preparing its federal income tax return. The remote seller shall sign the return, and transmit the return, with the amount of sales tax that it shows to be due, to the Commission.
- H. Remote sellers failing to comply with the provisions of this Code shall, if required by the Commission, file and transmit collected sales taxes more frequently until such time as they have demonstrated to the Commission that they are or will be able to comply with the provisions of this Code. Six (6) consecutive on-time sales tax filings, with full remittance of the sales taxes collected, shall establish the presumption of compliance and return to monthly or quarterly filing status.
- I. Sales tax returns shall be accompanied by proof as to claimed exemptions or exceptions from tax herein imposed. This proof shall be reviewed and deemed satisfactory by the Commission. In the absence of proof, the claimed exemptions or exceptions from tax shall be disallowed and therefore deemed taxable. The burden of establishing any tax exemption is upon the preparer.
- J. The preparer of the sales tax return shall keep and maintain all documentation supporting any and all claims of exempted sales and purchases. Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase, the date of the purchase, the name of the person making the purchase, the organization making the purchase, the total amount of the purchase, and the amount of sales tax exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that portion of the claim of exemption for which no documentation is provided.

#### XX.XX.90.- Estimated Tax

- A. In the event the Commission is unable to ascertain the tax due from a remote seller by reason of the failure of the remote seller to keep accurate books, allow inspection, or file a return, or by reason of the remote seller filing a false or inaccurate return, the Commission may make an estimate of the tax due based on any evidence in their possession.
- B. Sales taxes may also be estimated, based on any information available, whenever the Commission has reasonable cause to believe that any information on a sales tax return is not accurate.
- C. A remote seller's tax liability under this Code may be determined and assessed for a

period of six (6) years after the date the return was filed or due to be filed with the Commission. No civil action for the collection of such tax may be commenced after the expiration of the six- (6-) year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the six- (6-) year period, unless the seller waives the protection of this section.

- D. The Commission shall notify the remote seller, in writing, that the Commission has estimated the amount of sales tax that is due from the remote seller. The Commission shall serve the notice on the remote seller by delivering the notice to the remote seller's place of business, or by mailing the notice by certified mail, return receipt requested, to the remote seller's last known mailing address. A remote seller who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.
- E. The Commission's estimate of the amount of sales tax that is due from a remote seller shall become a final determination of the amount that is due unless the remote seller, within thirty (30) calendar days after service of notice of the estimated tax:
  - 1. Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs and other charges due; or
  - 2. Files a written notice with the Commission appealing the estimated tax amount in accordance with the appeal procedures.
  - 3. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment are:
    - a. The identity of the remote seller is in error;
    - b. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or
    - c. The remote seller disputes the denial of exemption(s) for certain sales.
- F. The amount of sales tax finally determined to be due under this section shall bear interest and penalty from the date that the sales tax originally was due, plus an additional civil penalty of fifty dollars (\$50) for each calendar month or partial month for which the amount of sales tax that is due has been determined.

#### XX.XX.100.-Returns – filing contents

- A. Every seller required by this chapter to collect sales tax shall file with the Commission upon forms furnished by it a return setting forth the following information with totals rounded to the nearest dollar:
  - 1. Gross sales
  - 2. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption;
  - 3. Computation of taxes to be remitted;
  - 4. Such other information as may be required by the Commission.
- B. Each tax return remitted by a remote seller shall be signed by a responsible individual who shall attest to the completeness and accuracy of the information on the tax return.
- C. The Commission reserves the right to reject a filed return for failure to comply with the requirements of this Code for up to three (3) months from the date of filing. The Commission shall give written notice to a remote seller that a return has been rejected,

including the reason for the rejection.

#### XX.XX.110 – Refunds

- A. Upon request from a buyer or remote seller the Commission shall provide a determination of correct tax rate and amount applicable to the transaction. In the case of an overpayment of taxes, the remote seller shall process the refund and amend any returns accordingly.
- B. If the claimant is a remote seller, and the tax refund is owed to any buyer, the remote seller submits, and the Commission approves, a refund plan to all affected buyers.

#### X XX.XX.120. – Amended Returns

- A. A remote seller may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:
  - i. The amended return is filed within one (1) year of the original due date for the return; and
  - ii. The remote seller provides a written justification for requesting approval of the amended return; and
  - iii. The remote seller agrees to submit to an audit upon request of the Commission.
- B. The Commission shall notify the remote seller in writing whether it accepts or rejects an amended return, including the reasons for any rejection.
- C. The Commission may adjust a return for a remote seller if, after investigation, the Commission determines the figure included in the original returns are incorrect; and the Commission adjusts the return within two (2) years of the original due date for the return.

#### XX.XX.130. – Extension of Time to File Tax Return

Upon written application of a seller, stating the reasons therefor, the Commission may extend the time to file a sales tax return but only if the Commission finds each of the following:

- 1. For reasons beyond the seller's control, the seller has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
- 2. Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the seller;
- 3. The remote seller has a plan to cure the problem that caused the seller to apply for an extension and the remote seller agrees to proceed with diligence to cure the problem;
- 4. At the time of the application, the remote seller is not delinquent in filing any other sales tax return, in remitting sales tax to the Commission or otherwise in violation of this chapter;
- 5. No such extension shall be made retroactively to cover existing delinquencies.

#### XX.XX.140 – Audits

- A. Any remote seller who has established a sales tax account with the Commission, who is required to collect and remit sales tax, or who is required to submit a sales tax return is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the remote seller in order to determine whether

appropriate amounts of sales tax revenue have been collected by the seller and remitted to the Commission.

- B. The Commission is not bound to accept a sales tax return as correct. The Commission may make an independent investigation of all retail sales or transactions conducted within the State or taxing jurisdiction.
- C. The records that a remote seller is required to maintain under this chapter shall be subject to inspection and copying by authorized employees or agents of the Commission for the purpose of auditing any return filed under this chapter, or to determine the remote seller's liability for sales tax where no return has been filed.
- D. In addition to the information required on returns, the Commission may request, and the remote seller must furnish, any reasonable information deemed necessary for a correct computation of the tax.
- E. The Commission may adjust a return for a remote seller if, after investigation or audit, the Commission determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the Commission adjusts the return within two (2) years of the original due date for the return.
- F. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the Commission may conduct investigations, hearings and audits and may examine any relevant books, papers, statements, memoranda, records, accounts or other writings of any seller at any reasonable hour on the premises of the remote seller and may require the attendance of any officer or employee of the remote seller. Upon written demand by the Commission, the remote seller shall present for examination, in the office of the Commission, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the demand unless the Commission and the person upon whom the demand is made agree to presentation of such materials at a different place.
- G. The Commission may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any remote seller refuses to obey any such subpoena, the Commissioner may refer the matter to the Commission's attorney for an application to the superior court for an order requiring the remote seller to comply therewith.
- H. Any remote seller or person engaged in business who is unable or unwilling to submit their records to the Commission shall be required to pay the Commission for all necessary expenses incurred for the examination and inspection of their records maintained outside the Commission.
- I. After the completion of a sales tax audit, the results of the audit will be sent to the business owner's address of record.
- J. In the event the Commission, upon completion of an audit, discovers more than five hundred dollars (\$500) in additional sales tax due from a remote seller resulting from a remote seller's failure to accurately report sales and taxes due thereupon, the remote seller shall bear responsibility for the full cost of the audit. The audit fee assessment will be in addition to interest and penalties applicable to amounts deemed to be delinquent by the Commission at the time of the conclusion of the audit.

#### XX.XX.150.- Audit protest

- A. If the remote seller wishes to dispute the amount of the estimate, or the results of an

examination or audit, the remote seller must file a written protest with the Commission, within 30 calendar days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:

1. The remote seller's justification for reducing or increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or
  2. The remote seller's reasons for challenging the examination or audit results.
- B. In processing the protest, the Commission may hold an informal meeting or hearing with the remote seller, either on its own or upon request of the remote seller, and may also require that the remote seller submit to an audit, if one was not previously conducted or a more formal audit, if an estimation audit was previously performed.
- C. The Commission shall make a final written determination on the remote seller's protest and mail a copy of the determination to the remote seller.
- D. If a written protest is not filed within 30 days of the date of the notice of estimated tax or the result of a review, audit or examination, then the estimated tax, review, audit or examination result shall be final, due and payable to the Commission.

#### XX.XX.160. – Penalties and Interest for Late Filing

- A. A late filing fee of twenty-five dollars (\$25) per quarter or partial quarter shall be added to all late-filed sales tax reports in addition to interest and penalties.
- B. Delinquent sales tax bear interest at the rate of fifteen percent (15%) per annum until paid.
- C. In addition, delinquent sales tax shall be subject to an additional penalty of twenty percent (20%). The penalty does not bear interest.
- D. Penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected.
- E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.
- F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the Commission, upon written application of the remote seller accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the remote seller to the Commission [and taxing jurisdiction], within forty-five (45) calendar days after the date of delinquency. A remote seller may not be granted more than one (1) waiver of penalty under this subsection in any one calendar year. The Commission shall report such waivers of penalty to the taxing jurisdiction, in writing.

#### XX.XX.170 – Repayment Plans

- A. The Commission may agree to enter into a repayment plan with a delinquent remote seller. No repayment plan shall be valid unless agreed to by both parties in writing.
- B. A remote seller shall not be eligible to enter into a repayment plan with the Commission if the remote seller has defaulted on a repayment plan in the previous two (2) calendar years.
- C. The repayment plan shall include a secured promissory note that substantially complies with the following terms:
- i. The remote seller agrees to pay a minimum of ten percent (10%) down payment on the tax, interest and penalty amount due. The down payment

shall be applied first to penalty, then to accumulated interest, and then to the tax owed.

- ii. The remote seller agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
  - iii. Interest at a rate of fifteen (15%) percent per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
  - iv. If the remote seller is a corporation or a limited liability entity the remote seller agrees to provide a personal guarantee of the obligations under the repayment plan.
  - v. The remote seller agrees to pay all future tax bills in accordance with the provisions of this chapter.
  - vi. The remote seller agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the Commission at the time the repayment plan is signed. The remote seller shall be responsible for the cost of recording the tax lien.
- D. If a remote seller fails to pay two (2) or more payments as required by the repayment plan agreement, the remote seller shall be in default and the entire amount owed at the time of default shall become immediately due. The Commission will send the remote seller a notice of default. The Commission may immediately foreclose on the sales tax lien or take any other remedy available under the law.

#### XX.XX.180. – Remote Seller Record Retention

Remote sellers engaged in activity subject to this chapter shall keep and preserve suitable records of all sales made and such other books or accounts as may be necessary to determine the amount of tax which the remote seller is obliged to collect. Remote sellers shall preserve suitable records of sales for a period of six (6) years from the date of the return reporting such sales, and shall preserve for a period of six (6) years all invoices of goods and merchandise purchased for resale, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the seller was obliged to collect under this chapter.

#### XX.XX.190. Cessation or Transfer of Business

- A. A remote seller who sells, leases, conveys, forfeits, transfers or assigns the majority of their business interest, including a creditor or secured party, shall make a final sales tax return within thirty (30) days after the date of such conveyance.
- B. At least ten (10) business days before any such sale is completed, the remote seller shall send to the Commission, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the remote seller's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.
- C. Upon notice of sale and disclosure of buyer, the Commission shall be authorized to disclose the status of the remote seller's sales tax account to the named buyer or assignee.
- D. Upon receipt of notice of a sale or transfer, the Commission shall send the transferee a copy of the sales tax code with this section highlighted.

- E. Neither the Commissioner's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.
- F. Following receipt of said notice, the Commission shall have sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the remote seller of the business. If the notice is not mailed at least ten (10) business days before the sale is completed, the Commission shall have twelve (12) months from the later of the completion of the sale or the Commission's knowledge of the completion of the sale within which to begin a final sales tax audit and assess sales tax liability against the seller of the business. The Commission may also initiate an estimated assessment if the requirements for such an assessment exist.
- G. A person acquiring any interest of a remote seller in a business required to collect the tax under this chapter assumes the liability of the remote seller for all taxes due the Commission [taxing jurisdiction], whether current or delinquent, whether known to the Commission or discovered later, and for all interest, penalties, costs and charges on such taxes.
- H. Before the effective date of the transfer, the transferee of a business shall obtain from the Commission an estimate of the delinquent sales tax, penalty and interest, if any, owed by the remote seller as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the remote seller has produced a receipt from the Commission showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the Commission and taxing jurisdiction for the lesser of the amount of delinquent sales tax, penalty and interest due from the remote seller as of the date of transfer, and the amount that the transferee was required to withhold.
- I. In this section, the term "transfer" includes the following:
  - 1. A change in voting control, or in more than fifty (50) percent of the ownership interest in a remote seller that is a corporation, limited liability company or partnership; or
  - 2. A sale of substantially all the assets used in the business of the remote seller; or
  - 3. The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the remote seller's gross receipts from sales, rentals or services.
- J. Subsection H of this section shall not apply to any person who acquires their ownership interest in the ongoing business as a result of the foreclosure of a lien that has priority over the Commission's sales tax lien.
- K. Upon termination, dissolution or abandonment of a corporate business, any officer having control or supervision of sales tax funds collected, or who is charged with responsibility for the filing of returns or the payment of sales tax funds collected, shall be personally liable for any unpaid taxes, interest, administrative costs and penalties on those taxes if such officer willfully fails to pay or cause to be paid any taxes due from the corporation. In addition, regardless of willfulness, each director of the corporation shall be jointly and severally liable for said amounts. The officer shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility or duty to act for the corporation. This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

- L. A remote seller who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within thirty (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the remote seller shall pay a penalty of one hundred dollars (\$100), plus an additional penalty of twenty-five dollars (\$25) for each additional thirty- (30-) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods.

XX.XX.200. – Use of Information on Tax Returns

- A. Except as otherwise provided in this chapter, all returns, reports and information required to be filed with the Commission under this Code, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:
  - 1. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
  - 2. The person supplying such returns, reports and information; and
  - 3. Persons authorized in writing by the person supplying such returns, reports and information.
- B. The Commission will release information described in subsection A of this section pursuant to subpoena, order of a court or administrative agency of competent jurisdiction, and where otherwise required by law to do so.
- C. Notwithstanding subsection A of this section, the following information is available for public inspection:
  - 1. The name and address of sellers;
  - 2. Whether a business is registered to collect taxes under this chapter;
  - 3. The name and address of businesses that are sixty (60) days or more delinquent in filing returns and/or in remitting sales tax; and, if so delinquent, the amount of estimated sales tax due, and the number of returns not filed.
- D. The Commission may provide the public statistical information related to sales tax collections, provided that no information identifiable to a particular remote seller is disclosed.
- E. Nothing contained in this section shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return or report filed by him, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers or sellers, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.
- F. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any remote seller or agent of any remote seller required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within 30 days after the required date for that business. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that seller as otherwise provided in this chapter.
- G. A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the Commission a release

of tax information request signed by the registered owner of the business.

- H. All returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection.

#### XX.XX.210 – Violations

- A. A remote seller that fails to file a sales tax return or remit sales tax when due, in addition to any other liability imposed by this Code, shall pay to the Commission all costs incurred by the Commission to determine the amount of the remote seller's liability or to collect the sales tax, including, without limitation, reviewing and auditing the remote seller's business records, collection agency fees, and actual reasonable attorney's fees.
- B. A person who causes or permits a corporation of which the person is an officer or director, a limited liability company of which the person is a member or manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the Commission as required by this Code shall be liable to the Commission for the amount that should have been collected or remitted, plus any applicable interest and penalty.
- C. Notwithstanding any other provision of law, and whether or not the Commission initiates an audit or other tax collection procedure, the Commission may bring a declaratory judgment action against a remote seller believed to meet the criteria of [XX.XX.040] to establish that the obligation to remit sales tax is applicable and valid under local, state and federal law. The action shall be brought in the judicial district of the taxing jurisdiction.
- D. The Commission may cause a sales tax lien to be filed and recorded against all real and personal property of a remote seller where the remote seller has:
  - 1. Failed to file sales tax returns for two consecutive filing periods as required by the Code; or
  - 2. Failed within 60 days of the end of the filing period from which taxes were due to either (a) remit all amounts due or (b) to enter into a secured payment agreement as provided in this Code.
  - 3. Prior to filing a sales tax lien, the Commission shall cause a written notice of intent to file to be mailed to the last known address of the delinquent remote seller.
- E. In addition to other remedies discussed in this Code, the Commission may bring a civil action to:
  - 1. Enjoin a violation of this Code. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.
  - 2. Collect delinquent sales tax, penalty, interest and costs of collection, either before or after estimating the amount of sales tax due under XX.XX.XX.
  - 3. Foreclose a recorded sales tax lien as provided by law.
- F. All remedies hereunder are cumulative and are in addition to those existing at law or equity.

#### XX.XX.220 – Penalties for Violations

- A. A buyer or remote seller who knowingly or negligently submits false information in a document filed with the Commission pursuant to this Code is subject to a penalty of five hundred dollars (\$500).
- B. A remote seller who knowingly or negligently falsifies or conceals information related to its business activities with the Commission or taxing jurisdiction is subject to a penalty of five hundred dollars (\$500).

- C. A person who knowingly or negligently provides false information when applying for a certificate of exemption is subject to a penalty of three hundred dollars (\$500).
- D. Any remote seller who fails to file a return required under this chapter within fifteen (15) calendar days of the due date, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of twenty-five dollars (\$25) for the first sales tax return not timely filed, and fifty dollars (\$50) for each subsequent sales tax return not timely filed within a one- (1-) year period thereafter. The filing of an incomplete return shall be treated as the filing of no return.
- E. A remote seller who fails or refuses to produce requested records or to allow inspection of their books and records shall pay to the Commission a penalty equal to three (3) times any deficiency found or estimated by the Commission with a minimum penalty of five hundred dollars (\$500).
- F. A remote seller who falsifies or misrepresents any record filed with the Commission is guilty of an infraction and subject to a penalty of five hundred dollars (\$500) per record.
- G. Misuse of an exemption card is a violation and subject to a penalty of fifty dollars (\$50) per incident of misuse;
- H. Nothing in this chapter shall be construed as preventing the Commission from filing and maintaining an action at law to recover any taxes, penalties, interest and/or fees due from a remote seller. The Commission may also recover attorney's fees in any action against a delinquent seller.

XX.XX.230. – Remote Sellers with a physical presence in the taxing jurisdiction.

Sellers with a physical presence in the taxing jurisdiction shall report, remit, and comply with standards, including audit authority, promulgated by this chapter to the taxing jurisdiction. This section applies to all sellers with a physical presence in the taxing jurisdiction even if the seller also has taxable remote sales. If the seller with a physical presence and also remote sales delivers products or services to a buyer outside that taxing jurisdiction, the seller shall file with the Commission. If the seller does not have a physical presence, then the return for the remote sales shall be filed with the Commission.

XX.XX.240. – Definitions

Note: Adoption of definitions does not compel individual municipality to exempt certain defined items. Each municipality should specifically adopt definitions necessary for consistency to implement both brick-and-mortar sales tax code and provisions related to remote sellers. For definitions that have no applicability to brick-and-mortar sales tax code, municipality may choose either to include definitions in the definitional section of general sales tax ordinance or adopt the common definitions by reference].

**“Alcoholic beverages”** means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

**“Booking Commissions”** means monies received from contracted or subcontracted guides, and lodging or other services sold as components of a recreational package.

**“Buyer”** means a person to whom a sale of personal property is made or to whom a service is

furnished (see purchaser).

**“Commission”** means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

**“Common carrier”** means an individual or a company, which is in the regular business of transporting freight for hire. This is distinguished from a private carrier which transports its own goods and equipment, and makes deliveries of goods sold to its customers.

**“Computer”** means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

**“Computer Software”** means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

**“Construction materials”** means materials, goods, components, fixtures or other items that are incorporated into the construction of real property and become a permanent component of that real property.

**“Delivered electronically”** means delivered to the purchaser by means other than tangible storage media.

**“Delivery charges”** means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.”

**“Drug”** means a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages:”

- A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or
- B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- C. Intended to affect the structure or any function of the body.

**“Dues, Membership and Subscription”** means monies paid for the purpose of membership, or qualifying or becoming eligible for goods or services, or discounts to goods or services.

**“Durable medical equipment”** means equipment including repair and replacement parts for same, but does not include “mobility enhancing equipment,” which:

- A. Can withstand repeated use; and
- B. Is primarily and customarily used to serve a medical purpose; and
- C. Generally is not useful to a person in the absence of illness or injury; and
- D. Is not worn in or on the body.

**“Electronic”** means relating to technology having electrical, digital, magnetic, wireless, optical,

electromagnetic, or similar capabilities.

**“Entity-Based Exemption”** means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

**“Farming supplies”** means animal food, seed, plants, fertilizers and other consumables used in an agriculture or mariculture business that sells its harvested grains, produce, meats, animal products or other farm production.

**“Food”** means any food or food product for home consumption except alcoholic beverages, tobacco, and prepared food. Food or food products includes, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

**“Gasoline, heating fuels and other consumable fuels”** means refined petroleum and petroleum-based products used for internal combustion engines and as the primary source for residential heating or domestic hot water. This may also include other types of fossil fuels as well as fuel sources that are renewable.

**“Goods for resale”** means:

- A. the sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; Sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.
- B. Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.
- C. Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

**“Long-term vehicle lease”** means a lease of a motor vehicle, as defined below, for a period of 24 months or longer. As used herein a "motor vehicle" is a motor vehicle, as defined in AS 28.40.100(12), that is either required to be registered under AS 28.10.011, or is exempted from registration under AS 28.10.011(6) and (11). However, "motor vehicle" does not include either an "off-highway vehicle" as defined in 13 AAC 40.010(30) or a "snowmobile" as defined in 13 AAC 40.010(49).

**” Manufacturing components”** means sales of personal property as raw material to a person engaged in manufacturing for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of a product manufactured for sale by the manufacturer.

**“Marijuana accessories”** means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body;

**“Marketplace Facilitator”** means a person that contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a physical or electronic marketplace operated by the person, and engages:

- (a) Directly or indirectly, through one or more affiliated persons in any of the following:
  - (i) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
  - (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;
  - (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or
  - (iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and
- (b) In any of the following activities with respect to the seller's products:
  - (i) Payment processing services;
  - (ii) Fulfillment or storage services;
  - (iii) Listing products for sale;
  - (iv) Setting prices;
  - (v) Branding sales as those of the marketplace facilitator;
  - (vi) Order taking;
  - (vii) Advertising or promotion; or
  - (viii) Providing customer service or accepting or assisting with returns or exchanges.

**“Medical equipment and supplies, and prescriptions”** means all medicines, medical goods or equipment prescribed by a health care provider licensed to practice in Alaska or any other state in the United States.

**“Mobility enhancing equipment”** means equipment including repair and replacement parts to same, but does not include “durable medical equipment,” which:

- A. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and
- B. Is not generally used by persons with normal mobility; and
- C. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

**“Monthly”** means occurring once per calendar month.

**“Newspaper”** means a publication of general circulation bearing a title, issued regularly at stated intervals at a minimum of at least two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of the publication, where such newspapers are distributed regularly to a paid subscription list.

**“Nexus”** means:

1. The seller’s annual statewide gross revenue, or seller’s marketplace facilitator’s annual statewide gross revenue, from the sale(s) of property, products or services delivered into the state meets or exceeds one hundred thousand dollars; or
2. The seller, or seller’s marketplace facilitator, sold property, digital products, or services delivered into the state in one hundred or more separate transactions.

**“Nonprofit organization”** means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual.

**“Over the counter drug”** means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The “over-the-counter-drug” label includes:

- A. A “Drug Facts” panel; or
- B. A statement of the “active ingredient(s)” with a list of those ingredients contained in the compound, substance or preparation.

**“Periodical”** means any bound publication other than a newspaper that appears at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and sufficiently similar in style and format to make it evident that it is one of a series.

**“Person”** means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

**“Point of Delivery”** means the location at which a product is delivered or service rendered.

- A. When the product is not received (or paid for) by the purchaser at a business location of the seller, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser’s recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller.
- B. For products transferred electronically, or other sales where the remote merchant lacks a delivery address for the purchaser, the merchant shall consider the point of delivery the sale to the billing address of the buyer.

**“Precious metals”** means any mineral, including but not limited to gold, silver, platinum and palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content (such as an ingot or bar) and not its form (such as jewelry or artwork) .

**“Prepared food”** means:

- A. Food sold in a heated state or heated by the seller;
- B. Two or more food ingredients mixed or combined by the seller for sale as a single item; or

C. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

“Prepared food” in B. does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.

“**Prewritten computer software**” means “computer software,” including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more “prewritten computer software” programs or prewritten portions thereof does not cause the combination to be other than “prewritten computer software.” “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances “computer software” of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person’s modifications or enhancements. “Prewritten computer software” or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains “prewritten computer software;” provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute “prewritten computer software.”

“**Product-Based Exemptions**” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“**Property**” means includes both tangible, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

“**Prosthetic Device**” means replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body to:

- A. Artificially replace a missing portion of the body;
- B. Prevent or correct physical deformity or malfunction; or
- C. Support a weak or deformed portion of the body.

“**Purchaser**” means a person to whom a sale of property is made or to whom a service is furnished (see also Buyer).

“**Quarter**” means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

“**Receive or Receipt**” means

- A. Taking possession of property;

- B. Making first use of services;
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser.

**“Remote Seller”** means a Seller making sales or services received or delivered within the State of Alaska, by internet, mail order, or telephone, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions.

**“Resale of Services”** means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.

**“Sale or retail sale”** means any sale for any purpose other than for resale.

**“Sales or Purchase price”** means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller's cost of the property sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

**“Sales-Type Lease”** means at lease commencement, (1) the lease transfers ownership of the underlying property, goods, or services to the lessee by the end of the lease term; (2) the lease grants the lessee an option to purchase the underlying property, goods, or services that the lessee is reasonably certain to exercise; (3) the lease term is for the major part of the remaining economic life of the underlying property, goods, or services. However, if the commencement date falls at or near the end of the economic life of the underlying property, goods, or services, this criterion shall not be used for purposes of classifying the lease; (4) the present value of the sum of the lease payments and any residual value guaranteed by the lessee that is not already reflected in the lease payments equals or exceeds substantially all of the fair value of the underlying property, goods, or services; (5) the underlying property, goods, or services is of such a specialized nature that it is expected to have no alternative use to the lessor at the end of the lease term.

**“Seller”** means: (1) a person making sales of property or services.

**“Senior citizen”** means any individual defined by a taxing jurisdiction as qualifying for an age-based exemption from sales tax.

**“Services”** means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:

- A. Professional services;
- B. Services in which a product or sale of property may be involved, including property made to order;
- C. Utilities and utility services not constituting a sale of personal property, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
- D. The sale of transportation services;
- E. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;
- F. Advertising, maintenance, recreation, amusement, and craftsman services.

**“Software downloads”** means software, applications, services and other digital programming for computers, tablets, smartphones and other electronic devices. This includes online subscriptions or purchases of news services, publications, audio books and other similar electronic versions of printed materials.

**“Software maintenance contracts”** means a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.

A “mandatory computer software maintenance contract” is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.

An “optional computer maintenance contract” is a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

**“Streaming services”** means digital content provided online for on-demand consumption rather than downloadable consumption. This typically includes, but is not limited to, video and audio files.

**“Tobacco”** means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

**“Transferred electronically”** means obtained by the purchaser by means other than tangible storage media.