

Proposed by:	Assemblymember Burnham	
Attorney Review:	12/14/2023	
First Reading:	12/21/2023	
Second Reading:	01/04/2024	
Vote: 5 Aye	0 Nay	1 Absent

MUNICIPALITY OF SKAGWAY, ALASKA
ORDINANCE NO. 23-27

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING SMC 4.08 SALES TAXATION AND ADOPTING THE ALASKA REMOTE SELLER SALES TAX CODE.

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 the State has no income tax, and sales tax revenues are one of the primary sources of funding for services provided by local governments; and

WHEREAS, the failure to collect sales tax on remote sales creates market distortions by creating an unfair tax advantage 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 fewer 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 burdening local infrastructure and services; 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 codes 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, this ordinance provides a safe harbor to those who transact limited sales in Alaska; and

WHEREAS, amending local sales tax codes reflects the 2018 Supreme Court "Wayfair" decision 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 Municipality of Skagway has entered 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 similar to the Streamlined Sales and Use Tax Agreement;

NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:

Section 1. Classification. Section 3 of this ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

Section 2. Purpose. To amend SMC 4.08 Sales Taxation and adopt the Alaska Remote Seller Sales Tax Code, included for reference as Attachment A.

Section 3. Amendment. The Skagway Municipal Code is hereby amended; (~~strike through~~) indicates text to be deleted from and (**bold underscore**) indicates text added to the current code. SMC 4.08 Sales Taxation is hereby amended as follows:

Chapter 4.08
SALES TAXATION

Sections:

4.08.005 Definitions.

4.08.010 Levy of tax.

4.08.020 Rate of general sales tax.

4.08.025 Sales made by remote sellers.

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- 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. "Remote sale" means ~~a retail sale in the municipality by a seller whose principal place of business is outside the municipality to a buyer or consumer located within the municipality.~~ a sale of goods or services by a remote seller or marketplace facilitator.
6. "Remote Seller" means a seller or marketplace facilitator making sales of goods or

services for delivery within the State of Alaska without having a physical presence in the jurisdiction in which delivery is being made.

- ~~67.~~ "Rents" means payments for use within the municipality of lands, buildings, apartments, offices, machinery, and equipment. The lease or rental of vehicles shall be considered taxable rents under this chapter if the point of origin of such vehicle is within the municipality.
- ~~78.~~ "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, to a buyer or consumer located within the municipality.
- ~~89.~~ "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.
- ~~910.~~ "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.
- ~~1011.~~ "Seller" includes every person making sales to a buyer or consumer, renting property or performing services for consideration.
- ~~1112.~~ "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.
- ~~1213.~~ "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 1st through March 31st, of the fiscal year. The assembly may declare a tax holiday on any type of sale at its discretion.
- ~~1314.~~ "Tour operator" means any person or business who sells or supplies a tour product as defined in this section.
- ~~1415.~~ "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.
- ~~1516.~~ "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.

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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 and remote sales made and/or delivered for consumption within the municipality;
- B. All services ~~performed~~ **delivered** 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.

4.08.020 Rate of general sales tax.

- C. The taxability of a retail and remote sale is determined by the location of the consumer of such sale. The taxability of a service performed or rental made is determined by the place where the service is ~~performed~~ **delivered** or the rental property is located. Retail and remote sales, services, and rentals made for use or consumption within the municipality are subject to municipal sales tax, unless otherwise exempted in this title.

4.08.025 Sales made by remote sellers.

- A. This section applies only to sales made by remote sellers as defined in section 4.08.005(A)(6).
- B. The Borough adopts by reference the February 24, 2021 edition of the Alaska Remote Seller Sales Tax Code (the "Uniform Code"), and as it may be amended, from time to time, by the Alaska Remote Seller Sales Tax Commission (the "Commission") including all definitions set forth therein.
- C. The Borough hereby delegates to the Commission the authority to administer and collect tax on remote sales made by remote sellers including remote seller sales tax registration, exemption certification, collection, remittance, and audit authority.

4.08.060 Exemptions from tax.

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

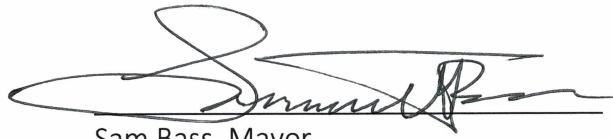
- 3. Local ~~G~~ Grocery store sales originating within the municipal boundary of the Municipality of Skagway Borough to borough residents who are sixty-five (65) years of age, or older, and who display at the time of purchase an identification card issued by the municipality and where such purchases are solely for the use of the

resident and spouse;

Section 4. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

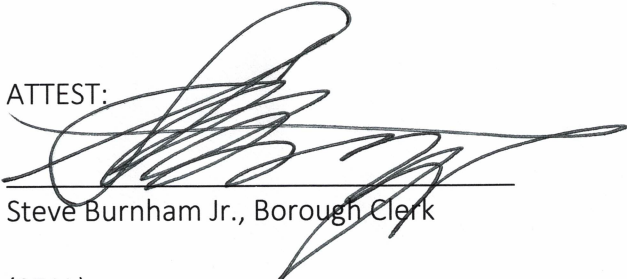
Section 5. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 4th day of January, 2024.



Sam Bass, Mayor

ATTEST:



Steve Burnham Jr., Borough Clerk

(SEAL)

