

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*

FROM: Brandi Harbaugh, Finance Director *BH*
Sean Kelley, Deputy Borough Attorney *SK*

DATE: October 24, 2019

SUBJECT: Resolution 2019-*056* Authorizing the Kenai Peninsula Borough to Join the Alaska Remote Seller Sales Tax Commission for the Purpose of Developing, Implementing, and Enforcing a Remote Seller Sales Tax Code and Designating the Commission Representative (Mayor)

This resolution authorizes the borough administration to execute the Alaska Intergovernmental Remote Seller Sales Tax Agreement (the "Agreement") and become a member municipality of the Alaska Remote Seller Sales Tax Commission (the "Commission"). This resolution also designates the borough's representative on the Commission. The formation of and membership in the Commission is the first step toward implementing a single-level administrator for the collection and remittance of remote seller sales taxes. A single-level administrator of remote seller sales taxes is a necessary long-term solution if the borough wants to collect remote seller, or "e-commerce", sales tax.

The inability to effectively collect sales tax on sales of personal property, products, or services transferred or delivered into the borough by a remote seller in response to orders placed electronically by local consumers is eroding the sales tax base of Alaska's communities. The resulting revenue losses are causing imminent harm to residents through the loss of critical funding for local education.

The failure to collect tax on remote sales results in artificial market distortions and competitive advantages for remote sellers through perpetuating tax shelters for businesses that limit their physical presence but still sell goods and services to local consumer, which gains more and more prevalence as technology continues to advance.

The recent decision by the United States Supreme Court in *South Dakota v. Wayfair* allows for amendment of the sales tax code to account for remote sellers who do not have a physical presence in a taxing jurisdiction, but do have a taxable connection with those jurisdictions. The decision in *South Dakota v.*

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Wayfair provided guidance that included the defensibility of a single-level statewide administration of remote sales tax collection and remittance.

Remote sellers who make a substantial number of deliveries into or have large gross revenues in Alaska benefit extensively from the Alaska market, affecting the economy generally, as well as local infrastructure. Modern computing and software options ensure that it is neither unusually difficult nor a substantial burden for remote sellers to collect and remit sales taxes associated with sales into Alaska taxing jurisdictions.

In the absence of state legislative action, in order to implement a single-level statewide sales tax administration, it is the intent of participating local taxing jurisdictions within Alaska to establish an intergovernmental entity (the "Commission"). The function and powers of the Commission will be set forth in the Agreement. Under the terms of the Agreement, in order to maintain membership in the Commission, the borough will be required, through a separate ordinance, to adopt certain uniform code provisions for the collection and remittance of municipal sales tax applicable to sales made by remote sellers.

Article X, Section 13 of the Alaska Constitution authorizes local government to enter into agreements for the cooperative or joint administration of any function or power, unless otherwise prohibited by law or charter. In addition AS 29.35.010(13) provides authority for the borough to enter into intergovernmental cooperative agreements for the joint administration of a borough function or powers. The intent of the Agreement is to enable Alaska's taxing jurisdictions to levy their municipal sales tax as now allowed by federal constitutional doctrines.

The uniform remote sales tax code will be presented to the assembly for consideration once adopted by the Commission. If the uniform code is adopted by the assembly, the administration of remote sales tax collection and remittance will be delegated to the Commission. To be clear, this resolution only authorizes entry into the Commission and a "seat at the table" during the formation process. As an initial Commission member, the borough will have a voice in drafting and adopting Commission bylaws, and a uniform remote seller sales tax code, and will elect the Commission's Board of Directors. Once the Commission is formed and bylaws are adopted, and before collections may begin, subsequent legislation will come before the assembly that would adopt the uniform code, address questions of fees for participation, and delegate remote seller sales tax administration, collection, audit, and enforcement authority to the Commission.