

Kenai Peninsula Borough
Finance Department

MEMORANDUM

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

THRU: Kelly Cooper, Assembly President (B) for K.C.
Hal Smalley, Assembly Vice-President (B) for H.S.

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

DATE: February 25, 2020

RE: UPDATED Amendment to Ordinance 2020-03, Amending KPB 5.18 Sales Tax Code and Enacting KPB 5.19 – Uniform Remote Seller Sales Tax Code (Cooper, Smalley)

To avoid potential confusion for local sellers and to avoid potential conflict between KPB 5.18 Sales Tax Code and KPB 5.19 Uniform Remote Seller Sales Tax Code, two amendments to Ordinance 2020-03 are offered.

The following show the amendments with the changes shown. *(Please note the bold underlined language is new and the bold strikeout language in brackets is to be deleted.)*

- Amend Section 1 to read as follows:

SECTION 1. That KPB 5.18.450(A) is hereby amended as follows:

5.18.450. - Tax jurisdiction—Point of Taxation.

- A. The rate of tax to be added to the sale price is based on the place of sale. The place of sale of goods, services, and merchandise is the location of the seller's ~~[RETAIL OUTLET]~~ physical presence at which or from which delivery was made, including installation charges and in-store pickups. If a seller has a physical presence in the borough, any remote sales delivered within the borough shall be taxed at the rate of the point of delivery. ~~[This provision applies to goods delivered to buyers within the borough and to goods delivered to buyers outside the borough but within the state of Alaska. If the invoice includes a charge for installation, then the place of the sale for the goods and service is the retail outlet at which or from which delivery was made. When goods are delivered into the borough from a point outside of the borough and the seller maintains an ongoing physical presence in the~~

~~borough, then the location of the seller's in-borough presence will determine the place of sale.]~~ [IF A SELLER HAS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH BUT HAS ESTABLISHED NEXUS WITH THE BOROUGH, THE POINT OF DELIVERY WILL DETERMINE THE PLACE OF SALE. IF THE SELLER HAS NO ONGOING PHYSICAL PRESENCE IN, OR NEXUS WITH, THE BOROUGH THE SALE IS NOT SUBJECT TO THE BOROUGH SALES TAX. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS ARE DEFINED AS SHOWN BELOW:

1. "NEXUS" MEANS THE SELLER HAS ESTABLISHED A TAXABLE CONNECTION WITHIN THE BOROUGH BY USE OF MARKETING TECHNIQUES, SUCH AS DIRECTED ADVERTISING IN THE BOROUGH VIA TELEPHONE OR INTERNET, OR DOOR-TO-DOOR SALES WITHIN THE BOROUGH, OR BY USE OF CONTRACT WORKERS OR CONTRACT OR COMMISSION AGENTS OR BUSINESSES, WHICH ARE ASSOCIATED WITH THE SELLER'S EFFORTS TO ESTABLISH OR MAINTAIN A MARKET FOR ITS GOODS OR SERVICES, DELIVER THOSE GOODS OR SERVICES, OR PROVIDE WARRANTY OR OTHER REPAIR OR RETURN SERVICES IN THE BOROUGH.
2. THE "POINT OF DELIVERY" WHERE THERE IS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH IS THE PLACE WHERE PHYSICAL POSSESSION OF THE GOODS IS TRANSFERRED TO THE CUSTOMER.]

...

- Amend Section 2 to read as follows:

SECTION 2. That KPB 5.18.680 is hereby enacted as follows:

5.18.680 – Uniform Remote Seller Sales Tax Code

~~[Sellers with no physical presence in the borough that have remote or internet-based sales in the borough and sellers with a physical presence in the borough that have remote or internet-based sales within other taxing jurisdictions in Alaska are subject to KPB 5.19 instead of KPB 5.18.]~~

Sellers with no physical presence in the borough that have remote or internet-based sales in the borough are subject to KPB 5.19 instead of KPB 5.18.

Sellers with a physical presence in the borough that have remote or internet-based sales delivered to a taxing jurisdictions in Alaska outside the borough boundaries are subject to KPB 5.18 and KPB 5.19.

Sellers with a physical presence in the borough that have remote or internet-based sales delivered within the borough boundaries are subject to KPB 5.18.450.

➤ Insert a new Section 3 to read as follows:

SECTION 3. That KPB 5.18.900 is hereby amended to include a definition of "Physical presence" as follows:

...

"Physical presence" means a seller who establishes any one or more of the following within the borough:

- 1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;**
- 2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the borough or engages in activities in the borough that are significantly associated with the seller's ability to establish or maintain a market for its products in the borough;**
- 3. Provides services or holds inventory within the borough;**
- 4. Rents or Leases property located within the boundaries of the borough.**

A seller that establishes a physical presence within the borough in any calendar year will be deemed to have a physical presence within the borough for the following calendar year.

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➤ Renumber the remaining Sections

Your consideration is appreciated.