

Introduced by: Mayor
Date: 01/07/25
Hearing: 02/04/25
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2025-01**

AN ORDINANCE AMENDING KPB CHAPTER 5.19, UNIFORM REMOTE SELLER SALES TAX CODE, IN ACCORDANCE WITH UPDATES AND CHANGES ADOPTED BY THE ALASKA REMOTE SELLER SALES TAX COMMISSION

WHEREAS, in 2024, the Alaska Remote Sellers Sales Tax Commission (“Commission”) unanimously approved updates to the code aimed to reduce duplicate language, remove the number of transactions to reduce the burden on small sellers, and clean-up general grammatical or other housekeeping items; and

WHEREAS, per the governing intergovernmental agreement, to retain full membership status the KPB must adopt the amendments approved by the Commission; and

WHEREAS, all the incorporated cities within the KPB are also members of the Commission and signatories to the Agreement; and

WHEREAS, the incorporated cities have opted to adopt KPB Chapter 5.19 by reference;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB Chapter 5.19, Uniform Remote Seller Sales Tax Code, is amended as follows:

CHAPTER 5.19. - UNIFORM REMOTE SELLER SALES TAX CODE

5.19.010. – 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.

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5.19.020. – Title to collected sales tax.

Upon collection by the remote seller or marketplace facilitator, title to collected sales tax vests in the Commission for remittance to the member jurisdiction. The remote seller or marketplace facilitator remits collected sales tax to the Commission on

behalf of the member jurisdiction, from whom that power is delegated, in trust for the member jurisdiction and is accountable to the Commission and member jurisdiction.

5.19.030. Collection—Rate.

A. To the fullest extent permitted by law, the sales tax levied and assessed by the member jurisdiction shall be collected on all remote sales where delivery is made within member jurisdiction, within the state of Alaska.

B. The applicable tax shall be added to the sales price as provided in the member jurisdiction's sales tax code, based on Point of Delivery and based on the date the property or product was sold or the date the service rendered was received.

[C. THE TAX RATE ADDED TO THE SALE PRICE SHALL BE THE TAX RATE FOR THE MEMBER JURISDICTION(S) WHERE THE PROPERTY OR PRODUCT IS SOLD, OR SERVICE THAT WAS RENDERED IS RECEIVED, AND BASED ON THE DATE THE PROPERTY OR PRODUCT WAS SOLD OR THE DATE THE SERVICE RENDERED WAS RECEIVED.]

[D]C. An Address and Tax Rate Database will be made available to remote sellers and marketplace facilitators, indicating the appropriate tax rate to be applied.

[E]D. The tax assessed shall be consistent with relevant jurisdictional tax caps, single unit sales, and exemptions.

[F]E. When a sale is made on an installment basis, the applicable sales tax shall be collected at each payment, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered, based on the member jurisdictions' Code(s).

[G]F. When a sales transaction involves placement of a single order with multiple deliveries made at different points in time that are separately invoiced, the applicable sales tax shall be collected on each separately invoiced delivery, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered.

G. The sales tax levied and assessed by the member jurisdiction may be included in the sales price on taxable sales where buyer and seller convenience would be substantially enhanced, provided the seller clearly communicates to the buyer that sales tax is being imposed.

5.19.040. Obligation to collect tax—Threshold criteria.

A. Any remote seller or marketplace facilitator must collect and remit sales tax in compliance with all applicable procedures and requirements of law, provided the remote seller or marketplace facilitator has met one of the following Threshold Criteria ("Threshold Criteria") in the current or previous calendar year:

1. The remote seller's statewide gross sales, including the seller's marketplace facilitator's statewide gross sales, from the sale(s) of property, products or services delivered in the state meets or exceeds one hundred thousand dollars (\$100,000);]; OR

2. THE REMOTE SELLER, INCLUDING THE SELLER'S MARKETPLACE FACILITATOR, SOLD PROPERTY, PRODUCTS, OR SERVICES DELIVERED IN THE STATE IN TWO HUNDRED (200) OR MORE SEPARATE TRANSACTIONS.]

B. For purposes of determining whether the Threshold Criteria are met, remote sellers or marketplace facilitators shall include all gross sales, from all sales of goods, property, products, or services rendered within the state of Alaska.

C. The following marketplace facilitators are excluded from the obligation to collect tax outlined in this section:

1. Delivery network companies that deliver tangible personal property on behalf of a marketplace seller that is engaged in business in a member jurisdiction,

2. Marketplaces facilitating the rental of transient lodging accommodations in hotels, commercial transient lodging facility, homes, apartments, cabins or other residential dwelling units, and

3. Marketplaces that facilitate or perform travel agency services.

5.19.050. Reporting and remittance requirements for local and remote sales.

A. Sellers with a physical presence in a member jurisdiction conducting only local sales shall report and remit to, and comply with standards of, including audit authority, the member jurisdiction.

B. Sellers with a physical presence in a member jurisdiction that also have remote or internet-based sales where the Point of Delivery is in a different Member Jurisdiction shall (i) report and remit the remote or internet sales to the Commission; and ii) report and remit the local sales to the Member Jurisdiction.

C. Sellers with a physical presence in a Member Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in the same Member Jurisdiction shall report and remit those remote sales to the Member Jurisdiction.

D. Sellers and marketplace facilitators that do not have a physical presence in a Member Jurisdiction must report and remit to the Commission all remote sales where the Point of Delivery is in a Member Jurisdiction.

E. A marketplace facilitator is considered the remote seller for each sale facilitated through its marketplace and shall collect, report, and remit sales tax to the Commission. [A MARKETPLACE FACILITATOR IS NOT CONSIDERED TO BE THE REMOTE SELLER FOR EACH SALE OR RENTAL OF LODGING FACILITATED THROUGH ITS MARKETPLACE, WHEREIN THE SELLER IS CONSIDERED TO HAVE A PHYSICAL PRESENCE IN THE MEMBER JURISDICTION.]

F. The following marketplace facilitators shall report and remit to, and comply with standards of, including audit authority, the member jurisdiction:

1. Delivery network companies that deliver tangible personal property on behalf of a marketplace seller that is engaged in business in a member jurisdiction,

2. Marketplaces facilitating the rental of transient lodging accommodations in hotels, commercial transient lodging facility, homes, apartments, cabins or other residential dwelling units, and

3. Marketplaces that facilitate or perform travel agency services.

5.19.060. Bundled Transactions.

A. If the sales price of a bundled transaction is attributable to products or services that are taxable and products or services that are nontaxable, the portion of

the sales price attributable to the nontaxable products may be subject to tax unless the seller can identify the nontaxable portion by reasonable and verifiable standards using its books or records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

B. A bundled transaction as defined in Section 270 does not qualify for exemption under a member jurisdiction's single item cap or single service cap exemption.

1. A seller may separate the respective portions of a bundle for purposes of applying a member jurisdiction's single item or single service tax cap to each respective portion.

2. The seller should identify the sales price attributed to each portion by reasonable and verifiable standards using its books or records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

5.19.0[6]70. No retroactive application.

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

5.19.0[7]80. 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 of property or product or date service is rendered, or with respect to credit transactions, at the time of collection. It shall be the duty of each remote seller or marketplace facilitator to collect the taxes from the buyer and to hold those taxes in trust for the taxing authority of the member jurisdiction. Failure by the remote seller or marketplace facilitator to collect the tax shall not affect the remote seller's, or marketplace facilitator's, responsibility for payment to the Commission.

5.19.0[8]90. Remote seller and marketplace facilitator registration requirement.

A. If a remote seller's gross statewide sales meet or exceed the Threshold Criteria under KPB 5.19.040, the remote seller shall register with the Commission. If the remote seller is a marketplace seller and only makes sales in Alaska through a marketplace, the marketplace seller is not required to register with the Commission. The marketplace seller must submit an affidavit attesting to these facts on a form provided by the Commission.

B. If a marketplace facilitator's gross statewide sales meet or exceed the Threshold Criteria under KPB 5.19.040, the marketplace facilitator shall register with the Commission. This requirement does not apply to the following marketplace facilitators:

1. Delivery network companies that deliver tangible personal property on behalf of a marketplace seller that is engaged in business in a member jurisdiction.

2. Marketplaces facilitating the rental of transient lodging accommodations in hotels, commercial transient lodging facility, homes, apartments, cabins or other residential dwelling units, and

3. Marketplaces that facilitate or perform travel agency services.

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 effective date of this Code or within thirty (30) calendar days of meeting the Threshold Criteria whichever occurs second. Registration shall be to the Commission on forms prescribed by the Commission.

D. An extension may be applied for and granted based on criteria established by the Commission, based on evidence produced to describe time necessary to update software or other technical needs, not to exceed ninety (90) days.

E. Upon receipt of a properly executed application, the Commission shall confirm registration, stating the legal name of the remote seller or marketplace facilitator, the primary address, and the primary sales tax contact name and corresponding title. The failure of the Commission to confirm registration does not relieve the remote seller or marketplace facilitator of its duty to collect and remit sales tax.

F. Each business entity shall have a sales tax registration under the advertised name.

G. The sales tax certificate is non-assignable and non-transferable.

H. The sales tax certificate satisfies a member jurisdiction's requirement to obtain a municipal business license, provided the remote seller does not have a physical presence in that member jurisdiction.

5.19.[09]100. 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 of sales tax returns are due monthly; quarterly or less frequent filing is optional upon application and approval by the Commission, consistent with the code of the member jurisdiction.

C. A remote seller or marketplace facilitator who has filed a sales tax return will be presumed to be making sales in successive periods unless the remote seller or marketplace facilitator files a return showing a termination or sale of the business in accordance with this Code.

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 Standard Time on the due date. Monthly returns are due the last day of the immediate subsequent month. Quarterly returns are due as follows:

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, FEDERAL HOLIDAY OR ALASKA STATE HOLIDAY, THE DUE DATE WILL BE EXTENDED UNTIL THE NEXT BUSINESS DAY IMMEDIATELY FOLLOWING.]

[F]E. Any remote seller or marketplace facilitator 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 or marketplace facilitator 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 or marketplace facilitator intends to cease doing business, a final return shall be filed along with a statement of business closure.

[G]F. The remote seller or marketplace facilitator shall prepare the return and remit sales tax to the Commission on the same basis, cash or accrual, which the remote seller or marketplace facilitator uses in preparing its federal income tax return. The remote seller or marketplace facilitator shall sign the return, and transmit the return, with the amount of sales tax and any applicable penalty, interest or fees that it shows to be due, to the Commission.

[H]G. Remote sellers and marketplace facilitators failing to comply with the provisions of this Code shall, if required by the Commission and if quarterly filing has been chosen, 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 quarterly filing.

[I]H. 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.

5.19.1[0]10. Estimated tax.

A. In the event the Commission is unable to ascertain the tax due from a remote seller or marketplace facilitator by reason of the failure of the remote seller or marketplace facilitator to keep accurate books, allow inspection, or file a return, or by reason of the remote seller or marketplace facilitator filing a false or inaccurate return, the Commission may make an estimate of the tax due based on any evidence in their possession.

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5.19.1[1]20. Returns—Filing contents.

A. Every remote seller or marketplace facilitator required by this chapter to collect sales tax shall file with the Commission upon forms furnished by the Commission a return setting forth the following information:

1. Gross sales [ROUNDED TO THE NEAREST DOLLAR];
2. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption[, ROUNDED TO THE NEAREST DOLLAR];
3. Computation of taxes to be remitted;
4. Calculated discount (if applicable) based on member jurisdiction's code; and
5. Such other information as may be required by the Commission.

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5.19.1[2]30. Refunds.

A. Upon request from a buyer or remote seller or marketplace facilitator 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 or marketplace facilitator shall process the refund and amend any returns accordingly.

B. A claim for refund of sales taxes collected in error shall be denied unless:

1. The claimant files a claim for refund with the Commission within one year of the date of sale, on the form prescribed by the Commission; and

2. If the claimant is a remote seller or marketplace facilitator, and the tax refund is owed to any buyer, the remote seller or marketplace facilitator submits, and the Commission approves, a refund plan to all affected buyers.

C. Interest will not be paid on tax refund requests filed with the Commission.

[D. THE MEMBER JURISDICTIONS MAY ALLOW A BUYER TO REQUEST A REFUND DIRECTLY FROM THE MEMBER JURISDICTION.]

5.19.1[3]40. Amended returns.

A. A remote seller or marketplace facilitator may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:

1. The amended return is filed within one (1) year of the original due date for the return for amended returns reducing the originally reported tax due; and

2. The remote seller or marketplace facilitator provides a written justification for requesting approval of the amended return; and

3. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

4. An amended return that increases the tax due from the amount originally reported can be submitted by a remote seller or marketplace facilitator at any time.

B. The Commission shall notify the remote seller or marketplace facilitator in writing (by email or otherwise) whether the Commission accepts or rejects an amended return, including the reasons for any rejection.

C. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation, the Commission determines the figure included in the original returns are incorrect; and the Commission adjusts the return within three (3) years of the original due date for the return.

D. A remote seller or marketplace facilitator may file a supplemental sales tax return, with supporting documentation, and the Commission may accept the supplemental return, but only in the following circumstances:

1. The remote seller or marketplace facilitator provides a written justification for requesting approval of the supplemental return; and
2. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

5.19.1[4]50. Extension of time to file tax return.

Upon written application of a remote seller or marketplace facilitator, 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:

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5.19.1[5]60. Audits.

A. Any remote seller or marketplace facilitator who has registered 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 or marketplace facilitator in order to determine whether appropriate amounts of sales tax revenue have been collected by the remote seller or marketplace facilitator 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 member jurisdiction.

C. The records that a remote seller or marketplace facilitator 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 or marketplace facilitator'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 or marketplace facilitator 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 or marketplace facilitator 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 three (3) years of the original due date for the return.

F. If after investigation or audit, the Commission determines that the remote seller or marketplace facilitator over-collected sales taxes, the remote seller or marketplace facilitator may request a refund with the submission of a detailed refund plan outlining the process by which the impacted customers will be refunded; the refund plan must be approved by the Commission before the refund will be issued to the remote seller or marketplace facilitator.

[F]G. 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 remote seller or marketplace facilitator at any reasonable hour on the premises of the remote seller or marketplace facilitator and may require the attendance of any officer or employee of the remote seller or marketplace facilitator. Upon written demand by the Commission, the remote seller or marketplace facilitator 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]H. The Commission may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any remote seller or marketplace facilitator 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 or marketplace facilitator to comply therewith.

[H]I. Any remote seller, marketplace facilitator, 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]J. 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]K. 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 or marketplace facilitator resulting from a remote seller's or marketplace facilitator's failure to accurately report sales and taxes due thereupon, the remote seller or marketplace facilitator 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.

5.19.1[6]70. [AUDIT OR ESTIMATED TAX PROTEST] Protests.

A. If the remote seller or marketplace facilitator wishes to dispute [the amount]a finding of the [ESTIMATE, OR THE RESULTS OF AN EXAMINATION OR AUDIT]Commission involving taxable sales, sales taxes, or penalties and interest, the remote seller or marketplace facilitator must file a written protest with the Commission]Protest Review Committee, within thirty (30) calendar days of the

date of the written notice of [ESTIMATED TAX OR RESULTS OF AN AUDIT OR EXAMINATION]the Commission's findings. The protest must set forth:

1. The remote seller's or marketplace facilitator's justification for reducing or increasing the [estimated tax amount, including any missing sales tax returns for the periods estimated]taxes, penalties or interest due from the Commission's findings; or

2. The remote seller's or marketplace facilitator's reasons for challenging the [EXAMINATION OR AUDIT RESULTS]Commission's findings.

B. In processing the protest, the [COMMISSION]Protest Review Committee may hold an informal meeting or hearing with the remote seller or marketplace facilitator, either on its own or upon request of the remote seller or marketplace facilitator, and may also require that the remote seller or marketplace facilitator 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]Protest Review Committee shall make a final written determination on the remote seller's or marketplace facilitator's protest and mail a copy of the determination to the remote seller or marketplace facilitator.

D. If a written protest is not filed within thirty (30) days of the date of the written notice of [ESTIMATED TAX] or [THE RESULT OF A REVIEW, AUDIT OR EXAMINATION]Commission's findings, then the [ESTIMATED TAX, REVIEW, AUDIT OR EXAMINATION RESULT]findings shall be final, due and payable to the Commission.

5.19.1[7]80. Penalties and interest for late filing.

A. A late filing fee of twenty-five dollars (\$25) per month, or fraction thereof, shall be added to all late-filed sales tax reports, until a total of one hundred dollars (\$100) has been reached. An incomplete return shall be treated as the filling of no return.

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5.19.1[8]90. Remote reseller certificate of exemption.

A. A remote seller with no physical presence in a member jurisdiction purchasing goods or services for the express purpose of resale to buyer(s) located in that member jurisdiction shall apply for a resale certificate through the Commission.

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5.19.[19]200. Repayment plans.

A. The Commission may agree to enter into a repayment plan with a delinquent remote seller or marketplace facilitator. No repayment plan shall be valid unless agreed to by both parties in writing.

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5.19.[20]210. Remote seller or marketplace facilitator record retention.

Remote sellers or marketplace facilitators 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 or marketplace facilitator is obliged to collect. Remote sellers or marketplace facilitators shall preserve suitable records of sales for a period of three (3) years from the date of the return reporting such sales, and shall preserve for a period of three (3) years all documentation supporting exempted sales of goods or services, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the remote seller or marketplace facilitator was obliged to collect under this chapter.

5.19.2[1]20. Cessation or transfer of business.

A. A remote seller or marketplace facilitator who sells, leases, conveys, forfeits, assigns, gifts or otherwise, transfers (collectively, a "transfer") the majority of their business interest, including to a creditor or secured party, shall make a final sales tax return within thirty (30) days after the date of such conveyance.

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5.19.2[2]30. 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:

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5.19.2[3]40. Violations.

A. A remote seller or marketplace facilitator 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 or marketplace facilitator's liability or to collect the sales tax, including, without limitation, reviewing and auditing the remote seller's or marketplace facilitator's business records, collection agency fees, and actual reasonable attorney's fees.

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5.19.2[4]50. Penalties for violations.

A. In the event that a penalty provided below is different from the same penalty in a member jurisdiction's sales tax code, the penalty prescribed in the member jurisdiction's sales tax code will apply.

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5.19.2[5]60. Remittance of tax; remote seller held harmless.

A. Any remote seller or marketplace facilitator that collects and remits sales tax to the Commission as provided by law may use an electronic database of state addresses that is certified by the Commission pursuant to subsection (C) of this section to determine the member jurisdictions to which tax is owed.

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5.19.2[6]70. Savings clause.

If any provision of [CHAPTER 5.19,]the Uniform Remote Seller Sales Tax Code[, AND CHAPTER 5.18, SALES TAX CODE,]and the member jurisdiction's sales tax code is determined by the Commission or an adjudicatory body of competent jurisdiction to discriminate against a remote seller in favor of a local seller with a physical presence in the [TAXING]member jurisdiction, the discriminatory provision shall continue in effect only to the extent such provision does not discriminate against a remote seller[, AND THE COMPARABLE CODE PROVISION APPLICABLE TO A LOCAL SELLER WILL APPLY TO A REMOTE SELLER,] and the remainder of [Chapter 5.19 and Chapter 5.18] the Remote Seller Sales Tax Code and the member jurisdiction's sales tax code shall continue in full force and effect.

5.19.2[7]80. Definitions.

For purposes of this chapter, the following definitions shall apply:

“Bundled transaction” means the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. A “bundled transaction” does not include the sale of any products in which the “sales price” varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

A. “Distinct and identifiable products” does not include:

1. Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as wrapping, labels, tags, and instruction guides – that accompany the “retail sale” of the products and are incidental or immaterial to the “retail sale” thereof.

2. A product provided free of charge with the required purchase of another product. A product is “provided free of charge” if the “sales price” of the product purchased does not vary depending on the inclusion of the product “provided free of charge.”

B. The term “one non-itemized price” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

C. A transaction that otherwise meets the definition of a “bundled transaction” as defined above, is not a “bundled transaction” if it is:

1. The “retail sale” of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

2. The “retail sale” of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

3. A transaction that includes taxable products and nontaxable products and the “purchase price” or “sales price” of the taxable products is de minimis.

"Buyer" or "purchaser" means a person to whom a sale of property or product is made or to whom a service is furnished.

"Commission" means the Alaska Remote Seller Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

"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.

“Delivery network company” means a business that facilitates, through the use of an Internet website or mobile application, the delivery of products or services.

“Digital good” means any product delivered electronically (whether downloaded, streamed or subscribed to). A digital good generally takes the form of a license to use or store in a digital or electronic format. Digital goods are generally intangible property for purposes of this chapter.

“Digital service” means any service delivered electronically that uses one or more software applications. Digital service includes any service that primarily involves the application of human effort by the seller, and the human effort originated after the customer requested the service, provided the service is delivered electronically.

"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.

"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.

"Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

"Local Sale" means a sale by a seller with a physical presence in a taxing jurisdiction, where the point of delivery is a location within the same taxing jurisdiction.

"Marketplace" means a physical or electronic place, platform or forum, including a store, booth, internet website, catalog or dedicated sales software application, where products or services are offered for sale.

"Marketplace facilitator" means a person that contracts with [REMOTE]marketplace sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the [REMOTE]marketplace seller's property, product, or services 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 [REMOTE]marketplace seller;

(ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and [REMOTE]marketplace sellers together;

(iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the [REMOTE]marketplace seller; or

(iv) Software development or research and development activities related to any of the activities described in (b) of this subsection, 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.

"Marketplace seller" means a person that makes retail sales through any physical or electronic marketplace that is operated by a marketplace facilitator.

"Member Jurisdiction" means a taxing jurisdiction that is a signatory of the Alaska Remote Seller Sales Tax Agreement, thereby members of the Commission, and who have adopted the Alaska Uniform Remote Seller Sales Tax Code.

"Monthly" means occurring once per calendar month.

"Nonprofit organization" means a business that has been granted tax-exempt status by the Internal Revenue Service.

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

"Physical presence" for the purposes of KPB 5.19.050 means a seller who establishes any one or more of the following within a member jurisdiction:

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

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

"Point of delivery" means the location at which property or a product is delivered or service is rendered.

- A. When the product is not received or paid for by the purchaser at a business location of a remote seller in a Member Jurisdiction, 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. When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a Member Jurisdiction the sale is considered to have been made in the Member Jurisdiction where the purchaser is present even if delivery of the product takes place in another Member Jurisdiction. Such sales are reported and tax remitted directly to the Member Jurisdiction not to the Commission.
- C. When the service is not received by the purchaser at a business location of a remote seller, the service is considered delivered to the location where the purchaser receives the service.

D. For products or services transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery of the sale to be the billing address of the buyer.

"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.

"Professional services" means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations that require a professional license under Alaska Statute.

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

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

"Receive" or "receipt" for purposes of section .030 and the definition of "Point of Delivery" means

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

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

"Remote sales" means sales of goods, [OR]services or bundled transactions by a remote seller or marketplace facilitator.

"Remote seller" means a seller or marketplace facilitator making sales of goods, [OR]services or bundled transactions for delivery within the State of Alaska, without having a physical presence in the member jurisdiction in which deliver is made.

"Resale of services" means sales of intermediate services to a business where the charge for which will be passed directly by that business to a specific buyer.

"Sale" or "retail sale" means any transfer of property or product or any provision of service(s) for consideration for any purpose other than for resale.

"Sales price or purchase price" means the total amount of consideration, including cash, credit, property, products, and services, for which property, products, [OR]services or bundled transactions 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 or product 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.

"Seller" means a person making sales of property, products, or services, or a marketplace facilitator facilitating sales on behalf of a seller.

"Services" means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise into a member jurisdiction including but not limited to:

- A. Professional services;
- B. Services in which a sale of property or product may be involved, including property or products made to order;
- C. Utilities and utility services not constituting a sale of property or products, 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.
- G. Digital services.

"Tax cap" means a maximum taxable transaction.

"Taxing jurisdiction" means a local government in Alaska that has a sales tax.

"Transferred electronically" means obtained by the purchaser by means other than tangible storage media.

"Travel Agency Services" means arranging or booking for a commission, fee or other consideration, vacation or travel packages, rental car, tours or other travel reservations or accommodations, tickets for domestic or foreign travel by air, ship, rail, bus or other medium of transportation, or hotel or other lodging accommodations.

5.19.2[8]90. Supplemental definitions.

For purposes of this Chapter, the Commission may promulgate Supplemental Definitions that are incorporated into this Remote Seller Sales Tax Code, provided they are not in conflict with or contrary to definitions set forth in the general sales tax ordinance of the member jurisdiction. Supplemental Definitions are available at www.arsstc.org. Provisions of the Supplemental Definitions that are amended, deleted, or added prior to or after the effective date of the latest amendment to this chapter shall be applicable for purposes of this chapter on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

SECTION 2. This ordinance shall be effective immediately.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF * 2025.**

Peter Ribbens, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent: