

**MEETING AGENDA
5:30 P.M. / COUNCIL CHAMBERS**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF MINUTES**
 - a. Minutes of September 12, 2019
- 4. APPROVAL OF AGENDA**
- 5. UNFINISHED BUSINESS**
 - a. Code Committee To Do List
 - b. Plastic Bag Use in Dillingham
- 6. NEW BUSINESS**
 - a. Remote Online Sales Tax
 - b. DMC 4.30.050 C Update
- 7. PUBLIC COMMENT/COMMITTEE COMMENTS**
- 8. ADJOURNMENT**

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1. CALL TO ORDER

The Code Review Committee met on Thursday, September 12, 2019, in the City Council Chambers, Dillingham, AK. Council Member Chris Napoli chaired the meeting and called the meeting to order at 5:30 p.m.

2. ROLL CALL

Committee Members present:

Mayor Alice Ruby	Chris Napoli	Gregg Marxmiller
Lori Goodell	Tod Larson	

3. APPROVAL OF MINUTES

- a. Minutes of July 25, 2019

MOTION: Gregg Marxmiller moved and Alice Ruby seconded the motion to approve the minutes of July 25, 2019.

VOTE: The motion passed unanimously by voice vote.

4. APPROVAL OF AGENDA

MOTION: Gregg Marxmiller moved and Alice Ruby seconded the motion to approve the agenda.

VOTE: The motion passed unanimously by voice vote.

5. UNFINISHED BUSINESS

- a. Code Committee's To Do List
 - Plastic bag update (MOA ban to start 9/15/2019)
 - Vendor informational letter to be drafted.
 - Several issues to consider, impact to retailers, timing to roll out, alternative bag choices, penalty for non-compliance.
 - MOA plastic bag ban Ordinance to be reviewed.

Rhonda Jenkins – A.C.; spoke in support of Dillingham regulations, requested vendors be included in the process, and stressed the need for public notice.

Gorden Isaacs; noted it would be good to time implementation with enough notice to deplete existing supply of bags on hand. Stated it takes to educate the public.

Susan Isaacs; spoke regarding repurposing old bags.

- Casual / isolated sales
 - DMC and Bethel's definition of casual / isolated were reviewed.
 - The process for determination of status is done by the City Manager.
 - Noted code needs to be manageable and enforceable by city staff.
 - There has been an effort to educate and locate businesses not in compliance.
 - This item will be revisited next year to allow administration time to gather more information regarding the current methodology.
- Internet sales tax

- AML is building a comprehensive plan (collections, distributions, enforcement, compliance, and self-audit) that communities may choose to join.
- Council will need to take official action to be part of the AML group.
- The City currently receives \$8,000 - \$10,000 per month from online sales tax.

6. NEW BUSINESS

- a. Bristol Bay Bud Company, LLC Retail Marijuana Store License Renewal

MOTION: Alice Ruby moved and Lori Goodell seconded the motion to recommend to council the city not protest Bristol Bay Bud Company Retail Marijuana Store License Renewal.

VOTE: The motion passed unanimously by voice vote.

- b. Review liquor / marijuana license review form
 - The existing form will be updated to include marijuana in the title.
 - A section will be added to reflect code requirements specific to marijuana regulations.

7. PUBLIC COMMENT/COMMITTEE COMMENTS

Alice Ruby: commented regarding the length of the meeting.

Gorden Isaacs: Noted the Bristol Bay Bud Company is a cash business that provides revenue for the city, and is now open 7 days a week. Noted the marijuana black market is still active. Requested Public Safety put pressure on marijuana sellers not complying with state and local regulations.

Susan Isaacs: commented on the need to be vigilant.

Gregg Marxmiller: thanked those that come and participate, noting it helps council make better decisions.

Chris Napoli: Stated it was good to have the A.C. representative at the meeting. Thanked the committee.

8. ADJOURNMENT

The meeting adjourned at 6:53 p.m.

Chris Napoli, Chair

ATTEST:

Lori Goodell, City Clerk

Approval Date: _____

CODE REVIEW COMMITTEE'S TO DO LIST

Updated 2.1.2019

C#YR	DATE ASSIGNED	TASK	STATUS Resolved?	Finance & Code
	August 2, 2018	Retail Plastic Bag Discussion		
	Dec. 6. 2018	Review Sales Tax exemption regarding lease		
	Dec. 6. 2018	Review personal use v commercial use; fishing vessels		
	April 4, 2019	Update Sales Tax Code, language for SCOTUS Wayfair decision, internet sales		
	April 11, 2019	Sales Tax Code review for casual and isolated sales		

2.06.070 Standing committees.

Standing committees of the city council will be code review, finance and budget, and public outreach. These committees will be advisory to the city council in their respective duties. Duties and composition for each committee will be as follows, and each chairperson or designee will report regularly to the city council at their regular meetings:

A. Code review committee will include but not limited to two city council members, mayor, city manager and city clerk. Their duties will be:

1. To review city ordinances as assigned;
2. To recommend revisions, and submit to council for action;
3. May recommend ordinances to be assigned;
4. To announce ordinances to be reviewed to the city council and public;
5. Work cooperatively and be supported administratively by the city clerk, and with the approval of the mayor, may request other administrative or legal advice or assistance when appropriate.

B. Finance and budget committee will include but not limited to two city council members, mayor, city manager, finance director or their designees. The goal of this committee will be to:

1. Guide the city of Dillingham toward long-term financial stability and promote fiscal responsibility;
2. Create and formulate fiscal policies, policy statements, and develop plans to achieve long-term goals for the city;
3. Complete tasks as assigned by the city council.

C. Public outreach committee will include but not limited to two city council members, and mayor. Their duties will be to:

1. Conduct informal meetings on neutral grounds to hear what the residents concerns are and to answer questions;
2. Partition areas in the community to deal with issues in that given area;
3. Meetings will be held between the months of September to May and are to be advertised publicly for maximum attendance;
4. Be responsible for meeting follow-up to those in attendance. (Ord. 04-02 § 1, 2004.)



October 21, 2019

Dear Vendor,

As you know the environment is a delicate ecological system and plastic bags have a significant impact to the balance of that system. Research has shown that plastic bags are harmful to bodies of water, and endanger wildlife. Additionally, plastic bags are toxic and take hundreds of years to decompose. With that in mind the City Council has tasked the Code Review Committee to contemplate what can be done to promote the reduction of plastic bag usage within the city. The Committee will be composing legislation for City Council to adopt in the coming year.

Prior to that process the Committee would to hear from local vendors who would be affected by any legislation changing how the municipal code manages plastic bag usage. The City is aware of the potential challenging nature this type of transformation may incur at the beginning of such a change. However, we believe in the long run the good that will be realized from a reduction in plastics outweighs the inconvenience that may be experienced during a transition period.

I'm holding a meeting at 10:00 a.m. on October 30, 2019 to begin a conversation regarding plastic bag usage in Dillingham. This will be held at city hall in the council chambers. I encourage you to attend, voice your concerns, and bring your ideas and recommendations as we begin to discuss this ecologically important issue.

If you have any questions you can contact the City Clerk's office at 907-842-5212 or by email at cityclerk@dillinghamak.us.

Sincerely,

Tod Larson
City Manager

Mayor
Alice Ruby

Manager
Tod Larson



Dillingham City Council
Chris Napoli
Bill Rodawalt
Aksel Buholm
Curt Armstrong
Andy Anderson
Gregg Marxmiller

MEMORANDUM

Date: October 30, 2019
To: Tod Larson, City Manager
From: Lori Goodell, City Clerk
Subject: Plastic Bag Use Meeting Report

The City held a public meeting to discuss the use of plastic bags in Dillingham. There were nine citizens in attendance. All who attended contributed to the discussion. The attendees were excited about this topic and all agree plastic bag usage needs to be addressed. There is a summary of comments follows:

- Plastic bags are not just a local issue, but a global concern, and a solution is needed.
- As the Salmon Capital of the world we should be on the forefront of this issue.
- As the process goes forward public notice needs to be widespread and inclusive across Dillingham.
- Vendors are aware of the issue and can work with the city towards changes in 2020.
- A definition of 'plastic bag' will be critical to the process. Don't define too broad or too tight. Decomposable bags break into smaller parts but do not really decompose.
- What are other alternatives to plastic? Could reusable bags be supplied for free for a short while during a transition period?
- Be aware of, and stay open to new technologies.
- Who is responsible for instigating change; citizens or local government?
- Consideration of cost for plastic vs reusable bags. \$1.25 for paper, \$3.00 for reusable, 0.044 for plastic.
- A phased in over time approach with a defined timeline is recommended to facilitate vendors implementation of changes in policy.

Other related concerns brought up: issues at the Landfill, other plastics i.e., straws and Styrofoam.

Attached to this report is a list of those that attended the meeting today.



CITY OF
DILLINGHAM
ALASKA

Meeting with the City Manager

Plastic Bags in Dillingham October 30, 2019

Name	Phone Number	Email
Jason Lamson	843-9739	Jslam@aol.com
Deven Lisa	842-5100	dlisac@hotmail.com
Paul Liedberg	843-1898	Paul Pauliedberg@yahoo.com
Kenna Thompson	843-3678	kenna-thompson@hotmail.com
John W. Caff	843-3125	
Karen Brito	843-0782	karen.brito@dlc@gmail.com
Jon Corbett	842-1240	windmillgrille@yahoo.com
Mark Crisac	8-5700	Mj1sac@hotmail.com
TYLER Thompson	842-2200	TYLER@KPLG.org

Karen Brito votes – no more plastic grocery bags available in Dillingham:

Pros:

Fewer plastic bags decorating our trees and yards
Savings for vendors – cost to supply bags is high and many times double bags are required – this cost is passed on
Folks will begin to think about recycling, repurposing and reusing
Less plastic in our environment, our planet and kids will benefit

Cons:

Vendors have inventory of previously purchased bags
Customers need to find other means to carry out purchases

Solutions:

Give a future timeline and begin PSA to notify community of change
Vendors begin to charge ten cents per plastic bag used with a stop date based on when they are likely to use up plastic bag inventory. (twenty cents for double bags)
Vendors get a supply of paper bags and recyclable bags to sell
Optional - Vendors begin to give back 5 cents per customer’s bag used at their store (N&N already offers this option)
Vendors offer reusable and paper bags available for purchase, offer recycled boxes for larger purchases and out of town customers
Customers get accustomed to bringing containers to take purchases home.

Elimination:

All plastic grocery bags at the checkout counter

Implementation:

ASAP
Time needed to promote,
Additional time to have it go through City Council
Do we need to vote on it or can it become a City Ordinance?
Time for vendors to advertise and get new supplies
Implement by April 2020?

- 32) Business agreed w/ ban - Concerned w/ cost of paper/reuseables
 - ↳ \$1.25 / paper
 - ↳ \$3 reuseable
 - Try to use boxes
 - ↳ plastic bags case of 500 for \$22
- 33) Styrofoam is also an issue.
 - ↳ Use mason jars, own straws as an alternative
- 34) Highly decomposable plastics do not really decompose and we actually ingest small parts.
- 35) Important to define what is "plastic"
- 36) Can - Reuse plastic bags for garbage now - heavy duty bags replace - potential issue that could occur as a result - unintended consequence.
- 37) Advertise better in the future to encourage participation.
- 38) Some were shocked by FB Post.
 - ↳ Use KDLG more
 - Blurbs by Tol has been great for getting word out
- 39) FOL - Nov. 22 - would like an update.

- 2) Phase in over time.
- 3) Cost of plastic vs. reuseables
- 4) S/B Community effort not driven by government
- 5) Reuseables are made of plastic, but hold up to 50 lb
 - ↳ Hold wallet, compartments for bottles, etc.
 - ↳ Purchased @ FM for \$8
 - ↳ Passed around examples of bags of various age
 - ↳ Washable
- 6) Need for Solutions.
 - ↳ Invitation to join F.O.L.
- 7) Citizen came up with issue; City operating exactly as it should by seeking public comment.
- 8) Garbage pit of plastic in the ocean - challenge globally.
- 9) Bristol Bay - Salmon Capital - makes sense for us to be on the forefront of the issue.
- 10) Animals dying from ingesting plastics.
- 31) Not a quick solution - positive step to help environment.

- 1) Why is this being brought up?
- 2) Constraining Commerce.
- 3) Notification through Facebook was the best way to roll this out.
- 4) Plastic bags are issue - we need a solution.
- 5) Excited issue is coming up - provided notes
- 6) ^{Pros:} Savings for vendors - costs are passed on; Recycling/Reuse; less plastic in environment
- 7) ^{Cons:} Cost, inventory, other means to carry
- 8) Need timeline, program details - how it would work - Options for customers from vendors.
- 9) Wants all plastic bags gone from check out counter.
- 10) Highly supports banning plastic bags.

- 1) Vendors have been preparing - can work change in 2020.
- 2) Don't define plastic bags too broadly (e.g. bio-bags).
- 3) Look to other communities for solutions/alternatives to plastic bags.
- 4) Stay open to new technologies.
- 5) Uses reuseable bags now - in favor of the ban
- 6) Reuses "bling" bags for shopping.
- 7) Provide reuseable bags for free for a specified amount of time to get people used to using them - not of funding source. Stores might be willing to support.
- 8) We all have responsibility for the issue.
- 9) Causes issues at our Landfill.
- 20) Define the alternatives.
- 21) Need to discuss how we handle trash in general - Friends of the Landfill.

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Introduced By: Parker, Murphy
Date: March 28, 2018
Public Hearing: April 11, 2018
Action: Enacted
Vote: 4 Yes, 1 No

CITY OF SOLDOTNA
ORDINANCE 2018-013

AN ORDINANCE AMENDING SOLDOTNA MUNICIPAL CODE TITLE 8 – HEALTH AND SAFETY TO
ESTABLISH A NEW CHAPTER 8.06 – DISPOSABLE PLASTIC SHOPPING BAGS

WHEREAS, the use of single-use-carry-out disposable plastic shopping bags in the City of Soldotna (City) burdens the environment, endangers wildlife, and has been shown to be harmful to bodies of water and problematic for solid waste management; and

WHEREAS, to decrease the number of littered disposable plastic shopping bags in the City, it is necessary to restrict general use; and

WHEREAS, it is in the best interest of the health, safety and welfare of all residents to restrict the use of single-use disposable plastic shopping bags; and

WHEREAS, plastic carry out bags do not biodegrade, create problematic environmental issues and frequently escape from trash containers and landfills creating a burden on residents and the City for clean-up;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOLDOTNA, ALASKA:

Section 1. Soldotna Municipal Code Title 8 is hereby amended by the addition of a new Chapter 8.06, Disposable Plastic Shopping Bags, to read as follows:

Chapter 8.06 – DISPOSABLE PLASTIC SHOPPING BAGS

Sections:

- 8.06.010 Purpose
- 8.06.020 Definitions
- 8.06.030 Single-Use Plastic Disposable Shopping Bag Prohibited

8.06.010 Purpose

The purpose of this chapter is to reduce the generation of waste from single-use plastic disposable shopping bags.

8.06.020 Definitions

Any word, term, or phrase not defined in this section shall have its ordinary and common meaning. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

"Affected Establishment" means any retail or commercial business facility located inside the City of Soldotna that sells goods or prepared food directly to consumers including but not limited to grocery stores, pharmacies, retail stores, and restaurants.

"Single-Use Plastic Disposable Shopping Bag" means a bag made from any plastic (including plastics marked or labeled as "biodegradable "or "compostable") or any material not marked or labeled as "biodegradable "or "compostable" that is neither intended nor suitable for continuous reuse and that is less than 2.25 mils thick, designed to carry customer purchases from the seller's premises, except for: bags used by

customers inside stores to package bulk items such as fruit, vegetables, nuts, grains, candy, or small hardware items, such as nails and bolts; bags used to contain dampness or leaks from items such as frozen foods, meat, or fish, flowers or potted plants; bags used to protect prepared foods or bakery goods; bags provided by pharmacists to contain prescription drugs; newspaper bags, laundry, or dry cleaning bags; or bags sold for consumer use off the seller's premises for such purposes as the collection and disposal of garbage, pet waste, or yard waste.

8.06.030 Single-Use Plastic Disposable Shopping Bag Prohibited

- A. No affected establishment may provide to any customer a single-use plastic disposable shopping bag for the purpose of carrying away goods from the point of sale.
- B. No person may distribute single-use plastic disposable shopping bags at any city facility or any event held on city property.
- C. Any violation of this chapter shall be considered a minor offense punishable as provided in SMC 1.08.080.

Section 2. That SMC 1.05.080 Minor Offence Fine schedule is hereby amended to include the following offenses and fines:

Soldotna Municipal Code Reference	Offense	Fine
08.06.030	Distribution of single use, plastic disposable shopping bags.	\$300

Section 3. This ordinance shall become effective November 1, 2018.

ENACTED BY THE CITY COUNCIL THIS 11TH DAY OF APRIL, 2018.

Nels Anderson, Mayor

ATTEST:

Michelle M. Saner, MMC, City Clerk

Yes: Cashman, Murphy, Parker, Cox
No: Whitney

TO: Mayor Anderson and Members of the City Council
FROM: Lisa Parker, Council Member and Linda Murphy, Vice Mayor
DATE: March 28, 2018
SUBJECT: Ordinance 2018-013 - Amending Soldotna Municipal Code Title 8 – Health and Safety to Establish a New Chapter 8.06 – Disposable Plastic Shopping Bags

Over the past few years Soldotna has significantly improved the aesthetics of our community, including improvements to signs, upgrades to city parks and the addition of more festivities for the enjoyment of residents and visitors alike.

Recently, the Gganit̓chit Dena'ina Youth Council sent an invitation to come to the viewing of the documentary "Bag It", discussing the effect plastic has on our waterways, oceans, and bodies. Based on the request from the Youth Council and Soldotna residents, Vice Mayor Murphy and I request you support the introduction of Ordinance 2018-013 – Disposable Plastic Shopping Bags.

The proposed ordinance was adapted from the ordinance enacted by the City of Wasilla. Unlike many ordinances that are effective immediately, the proposed ordinance has an effective date of November 1, 2018 giving businesses the opportunity to make the transition.

While there are countless reasons for cutting down on the number of plastic bags, some primary reasons for elimination include:

1. They are unsightly – how often do we see the bags blowing across the road, in a parking lot or floating down the Kenai River.
2. They are bad for wildlife – plastic bags can choke or poison birds, fish and animals. Particularly vulnerable are marine life, like our Cook Inlet Beluga Whales.
3. They take years to decompose.

The City Manager and I have had the opportunity to visit with some of the local businesses to discuss the ordinance. While there has been no outright opposition, businesses have requested the ordinance not take effect immediately, giving them and their staff time to inform shoppers of the upcoming change. Additionally, we've discussed working with the Soldotna Chamber of Commerce to deliver the message.

Informational:

City of Hopper Bay currently has a plastic bag ban in effect.

City of Bethel in 2012 enacted a law that requires all plastic bags be biodegradable. The biodegradable capabilities vary from each biodegradable bag type and some do not biodegrade in the Alaska climate.

City of Homer enacted a law banning plastic bags in August of 2012, with an effective date of January 1, 2013. In February of 2013 a citizen's referendum was filed and in October of 2013 the voters of the City of Homer repealed the plastic bag ban.

City of Wasilla enacted a law banning plastic bags in January of 2018, with an effective date of July 1, 2018.



CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2019-35

A RESOLUTION OF THE DILLINGHAM CITY COUNCIL AUTHORIZING THE CITY OF DILLINGHAM TO JOIN THE ALASKA REMOTE SELLER SALES TAX COMMISSION FOR THE PURPOSE OF DEVELOPING, IMPLEMENTING, AND ENFORCING A REMOTE SELLERS SALES TAX CODE

WHEREAS, the inability to effectively collect sales tax on sales of property, products or services transferred or delivered into Alaska in response to orders placed electronically by consumers with remote sellers, 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 broad-based tax, and sales tax revenues are essential in funding the provision of services by local governments; and

WHEREAS, the failure to collect tax on remote sales creates market distortions by creating tax shelters for businesses that limit their physical presence in the state or cities and boroughs but still sell their goods and services to their consumers, something that becomes easier and more prevalent as technology continues to advance; 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 is a growing problem that is likely to only worsen in the near future; 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 generally, 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, the recent decision by the United States Supreme Court in *South Dakota v. Wayfair* allows for the amendment of the sales tax code to account for remote sellers who do not have a physical presence in either the state of Alaska or within the City of Dillingham, but do have a taxable connection with the state of Alaska and City of Dillingham; and

WHEREAS, the decision in *South Dakota v. Wayfair* provided guidance that included the defensibility of a single-level statewide administration of remote sales tax collection and remittance; and

WHEREAS, in order to implement a single-level statewide sales tax administration, it is the intent of local taxing jurisdictions within Alaska to establish an intergovernmental entity known as the Alaska Remote Seller Sales Tax Commission (the "Commission"); and

WHEREAS, the function and powers of the Commission will be set forth under the Alaska Intergovernmental Remote Seller Sales Tax Agreement (the "Agreement"), a cooperative agreement between Commission members; and

WHEREAS, under the terms of the Agreement, in order to maintain membership in the Commission, the City of Dillingham will be required to adopt certain uniform code provisions for the collection and remittance of municipal sales tax applicable to sales made by remote seller; and

WHEREAS, the uniform remote sales tax code will be presented to the Dillingham City Council for consideration once adopted by the Commission; and

WHEREAS, once adopted, the administration of remote sales tax collection and remittance will be delegated to the Commission; and

WHEREAS, the intent of the Agreement is to enable Alaska's taxing jurisdictions to levy their municipal sales tax to the maximum limit of federal and state constitutional doctrines; and

WHEREAS, AS 29.35.010 (12) allows the Dillingham City Council to authorize membership in an organization that promotes legislation for the good of the municipality.

NOW, THEREFORE, BE IT RESOLVED the Dillingham City Council:

Section 1. Authorization. Authorizes the Manager to negotiate, execute, and submit all necessary documents to obtain and maintain membership in the Alaska Remote Seller Sales Tax Commission.

Section 2. Representation. Designates the Manager as the City of Dillingham representative on the Commission.

Section 3. Scope of Agreement. The Alaska Intergovernmental Remote Seller Sales Tax Agreement is included as Attachment A.

Section 4. Effective Date. This resolution shall be effective immediately after its adoption.

PASSED and ADOPTED by the Dillingham City Council on November 7, 2019.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Lori Goodell, City Clerk

DRAFT

Alaska Intergovernmental Remote Seller Sales Tax Agreement

FINAL DRAFT

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 (3), 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 affected 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.

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.



Making the case for a coordinated municipal response to online merchants collecting local sales tax in Alaska

Alaska Municipal League – September 25, 2019

Why now?: The U.S. Supreme Court in June 2018 changed the rules for collecting sales tax on online orders. It removed a long-standing limitation that had blocked states from requiring all online sellers to comply with their sales tax laws. This, in effect, creates a level playing field for local businesses. The Supreme Court decision was clear: It said allowing states to apply their tax laws to online sellers the same as local merchants is a matter of fairness. The court said past practice enabled online sellers to avoid collecting sales taxes “has come to serve as a judicially created tax shelter for businesses that decide to limit their physical presence and still sell their goods and services to a state’s consumers.”

Across the nation, states are working to comply with the Supreme Court decision, namely by ensuring the streamlined, single-level administration of sales tax collection. While this is straightforward in states with a sales, there are five states that don’t have a broad-based sales tax, and Alaska the only one that has local governments who do. Alaska’s cities and boroughs are at an administrative and enforcement disadvantage. Remote sellers have been clear that until this is addressed, they will not collect the sales taxes required by individual local governments. To the extent that there have been isolated cases of collections, some of those businesses get it wrong, misapplying taxes and exemptions and shortchanging municipalities or overcharging residents. (Note: Amazon’s current remittance is not based on remote sales, or the *Wayfair* case)

What the Alaska Municipal League is trying to do: The 165-member Alaska Municipal League, a nonprofit statewide organization, has spent the last year researching options for member local governments, and worked with many members to respond to this opportunity. Together, AML and members have developed an intergovernmental agreement, bylaws for a commission, and a remote sales tax code that local governments with sales tax codes will adopt. AML is developing the structure for centralized sales tax administration for remote merchants (out-of-state online sellers) to register and report their tax collections for distribution to the participating cities and boroughs.

The intergovernmental agreement, or compact, is voluntary, but those local governments that do not sign on are less likely to see remote sellers comply with their individual tax codes. The code that should be adopted by each member is generally consistent with most local governments, with provisions for parity and working toward compliance over time. The important thing to know is that each local government maintains its own tax rate and exemptions. The commission that is established will be delegated taxing authority. The board of directors of the commission will be voted on by members and have responsibility for the governance. The commission will contract with AML to administer the centralized administration, with collection, remittance and reporting that meets the need of each local government. This centralized administrator will include software that maintains a tax variability matrix, able to account for differences between members, and a sales tax boundary map so that remote sellers can comply with municipal boundaries.

A Timeline: There is a governance committee comprised of local government finance officers, attorneys and managers, who have drafted all relevant documents. These will need to be reviewed and adopted by any local government that wishes to participate. Adoption means delegating authority to a municipal

official to sign the intergovernmental agreement on behalf of the city or borough, and delegating taxing authority to the Commission. Adoption also means agreeing to the common tax code for remote sales. AML will contract with a software developer and build up a sales tax staff to administer the program.

We envision the governance being established in late November, perhaps at the annual AML conference, with full implementation in January 2020. Adoption will take time for many local governments, and members should deliberate as needed to come to resolution of adoption. The process accommodates joining at any point.

What are the benefits of taxing online sales the same as local sales

The biggest benefit is fairness:

- Fairness in funding public services in the community – the reason each municipality has a sales tax code is to be able to provide essential services for residents.
- Fairness for local merchants – the current system creates an incentive for residents to shop online, which creates additional burdens to brick and mortar stores.
- Fairness so that residents who shop online are charged the correct amount of tax – maintaining the uniqueness of each jurisdiction is important, and remote sellers can't comply with individual government codes without centralization.

“There is little logic in asking consumers who prefer to shop at local businesses to pay more toward funding public services than consumers who shop via their laptops or smartphones,” the independent Institute on Taxation and Economic Policy wrote of tax-free online shopping in a March 2018 report. “Local economies are harmed by this arrangement,” the report said, noting the competitive disadvantage it creates for “businesses that hire local residents, pay local property taxes, and otherwise contribute to the local economy.”

The numbers

Nationwide, e-commerce sales totaled more than \$500 billion in 2018, and the number is growing. Online sales totaled about 14 percent of total U.S. retail sales of \$3.6 trillion last year, according to Commerce Department estimates. The U.S. Government Accountability Office estimates that states lost about \$13 billion from the inability to fully collect taxes on online sales in 2017. The Alaska Municipal League estimates more than \$20 million in annual sales tax receipts could be at stake for those cities and boroughs with a sales tax.

National trends

A growing number of states have amended or are drafting changes to their tax codes to ensure they fairly and fully collect taxes from remote merchants selling goods online, the same as they do with local merchants. More than 20 states have adopted the Streamlined Sales and Use Tax Agreement, a common set of administrative rules and tax definitions to streamline enforcement nationwide.

The risks of doing nothing

The risks are more problems: Confusion for local consumers from erroneously collected sales taxes, further unfair competition that erodes local businesses, and lost municipal revenue as online shopping continues to grow. That is lost revenue Alaska communities cannot afford. At the same time, without centralized administration, the majority of remote sellers will not comply with local tax codes.



Online Sales Tax – Background and FAQ

How did the June 2018 U.S. Supreme Court decision change the sales tax world?

The U.S. Supreme Court on June 21, 2018, upheld the state of South Dakota’s right to require online sellers to collect and remit sales tax on orders delivered into the state. The 5-4 decision effectively overturned a Supreme Court decision from 1992 that went against the state of North Dakota. The 2018 case is South Dakota vs. Wayfair (a nationwide online retailer of furniture and home goods).

What were the issues in the court case?

In its ruling, the Supreme Court noted that the South Dakota Legislature had determined “that the inability to collect sales tax from remote sellers was ‘seriously eroding the sales tax base’ ... causing revenue losses and imminent harm.”

The court explained, “The central dispute is whether South Dakota may require remote sellers to collect and remit the tax without some additional connection to the state,” such as an office or warehouse or employees. And although the 1992 decision against North Dakota commented that requiring remote sellers to collect and remit sales tax “might unduly burden interstate commerce” without such a physical or legal connection, called nexus, the court’s 2018 decision found otherwise. “The administrative costs of compliance, especially in the modern economy with its Internet technology, are largely unrelated to whether a company happens to have a physical presence in a state,” the Supreme Court said in its 2018 decision.

Allowing online sellers to avoid collecting sales taxes “has come to serve as a judicially created tax shelter for businesses that decide to limit their physical presence and still sell their goods and services to a state’s consumers,” the court added.

In its order, the Supreme Court said it overruled the 1992 decision because it was “unsound and incorrect.”

Does the court decision require online sellers to collect sales tax?

No, it does not require online merchants of goods and services to do anything unless a state’s sales and use tax is written to apply to online orders (remote merchants). If a state chooses not to extend its sales and use tax to online orders, the Supreme Court decision does not require merchants to voluntarily collect and remit the tax. The decision is up to each state.

Does the court decision apply to municipalities?

No, not exactly, not directly. The word “municipality” appears nowhere in the Supreme Court decision. The case, the briefings, the discussion and the order focused solely on state sales and use tax. But, the same reasoning, the same legal questions likely would apply to municipal sales taxes: Are they discriminatory against interstate commerce, do they pose an undue burden on interstate commerce, are they administered fairly to all parties. As Alaska is the only state that allows municipal sales taxes without an overriding set of rules in a state sales tax, Alaska is unique.



What are the challenges for Alaska municipalities?

Without a clearly defined set of legal standards in the court decision for municipalities, Alaska cities and boroughs have to make their best legally educated guess at what set of tax definitions, rules, exemptions and administrative procedures would be needed to replicate and adhere to the intent of the court opinion allowing taxation of online sales. Such as, no undue burden on interstate commerce, no retroactive taxation, and a system that standardizes tax rules to reduce administrative and compliance costs for remote merchants. There is no checklist of what will work or what is not allowed — Alaska municipalities will have to set their own trail.

What's the path forward for Alaska municipalities that want to collect taxes on online sales?

A coordinated approach is best. In fact, it's probably the only way to succeed. It's hard to imagine that a large, nationwide online merchant, a small remote seller — or a court, in the event of a legal challenge — would accept dozens of municipal codes, each with its own unique set of definitions, administrative rules, limits and exemptions as an acceptable system that standardizes taxes to reduce administrative and compliance costs. In fact, they have communicated that they wouldn't.

By working together, Alaska cities and boroughs stand the best chance of crafting a workable sales tax structure that serves local needs while establishing a legally secure path to collecting municipal taxes from online sales.

What is the Alaska Municipal League doing to help?

The Alaska Municipal League established a working group in 2018 to explore the best answers for bringing Alaska cities and boroughs into the world of collecting tax revenue from online sales. AML is looking into the legal issues, software and administrative costs, including the option of contracting with a third-party vendor with experience in state sales taxes to handle the collection and distribution of tax remittances from online merchants. AML has provided frequent updates on its progress to its members, with reports at the board meeting in Anchorage in May, the summer meeting in Soldotna in August, and a final review at the general membership meeting in Anchorage in November.

The idea is that AML would establish a cooperative effort — entirely optional for each Alaska municipality — to participate in a centralized online sales tax collection, administration and enforcement program. Municipalities that join and agree to adopt the required changes to their sales tax codes would benefit from the collective strength of presenting a unified approach to online merchants nationwide. Cities or boroughs that choose not to join still could try on their own to adopt and enforce sales taxes on online merchants.

State law allows Alaska municipalities to sign intergovernmental cooperating agreements — similar to mutual-aid pacts between fire departments. AML's legal review concluded that a cooperative tax administration and collection agreement essentially would be the same and would not require any state legislation.

Is there any guarantee that municipalities can force online sellers to collect the tax?

There is no guarantee that every online merchant will willingly collect and remit sales taxes to a centralized administration for Alaska municipalities. But the odds of success are much better than 100+ different sales tax administrations statewide.



The deciding factor may be how “homogenized” Alaska’s cities and boroughs are willing to make their tax codes. The more the codes are the same, the better the argument that the municipalities are adhering to the standards the Supreme Court cited in its Wayfair decision.

“Nobody can give you an absolute legal answer” as to how far municipalities can stray from the intent and spirit of the Wayfair decision and still win if taken to court, the vice president and tax counsel for the National Retail Foundation told AML. Her advice: Go with the Streamlined Sales Tax Project’s definitions

What is the Streamlined Sales Tax Project?

The Streamlined Sales Tax Project began in March 2000 with the goal “to find solutions for the complexity in state sales tax systems.” It was, in great part, that complexity that led to the 1992 Supreme Court decision against North Dakota’s efforts to require tax collections by remote merchants.

The result is the Streamlined Sales and Use Tax Agreement, which targets simplifying and modernizing sales and use tax administration to substantially reduce the burden of tax compliance. The agreement focuses on state-level administration of sales and use taxes; uniformity in each state’s state and local tax bases; uniformity of major tax base definitions; central electronic registration for merchants; simplification of state and local tax rates; uniform sourcing rules for all taxable transactions (defining the point of the taxable transaction); and simplified administration of exemptions, tax returns and payments.

As of March 2019, 24 states had adopted the agreement. No federal law requires states to sign on for the Streamlined Sales Tax Project, but doing so makes it easier for states to capture maximum revenues from remote merchants.

The more that Alaska municipalities can follow the Streamlined Sales and Use Tax Agreement, the better the odds of success in achieving full compliance from online merchants. The AML working group on this topic have adopted to a large extent SSUTA definitions.

Can complexity lead to legal objections?

Yes, but it is unknown how much complexity would break the legal back of taxing online sales. In his dissenting opinion in the Wayfair case, Chief Justice John Roberts pointed to the complexity of sales tax laws nationwide. “Correctly calculating and remitting sales taxes on all e-commerce sales will likely prove baffling for many retailers. Over 10,000 jurisdictions levy sales taxes, each with different tax rates, different rules governing tax-exempt goods and services, (and) different product category definitions.” He noted that New Jersey collects sales tax on yarn purchased for art projects but not on yarn made into sweaters. “Texas taxes sales of plain deodorant at 6.25 percent but imposes no tax on deodorant with antiperspirant.” Illinois categorizes Twix bars as food and Snickers candy, and taxes them differently, the chief justice noted, only because Twix includes flour.

Why are Amazon and some merchants already collecting sales tax for Alaska municipalities?

Amazon has started collecting sales tax in several Alaska jurisdictions, though it appears that in most cases it is collecting tax only on Amazon’s own goods and not on sales of third-party sales. A coordinated, AML-led approach would remedy this shortcoming by encouraging municipalities to change their codes to encompass all goods sold online, whether direct by the



merchant or fulfillment by a third-party seller. A coordinated effort also would clarify which business is responsible for collecting and remitting the tax: The website that takes the order or the business that fills the order?

As of March 2019, Amazon had yet to register with all Alaska municipalities, and for most municipalities the online merchant's first sales tax returns are not due until a month after the end of the first quarter. After Amazon and other vendors file their first returns, Alaska municipalities will have a better sense of any enforcement issues.

There have been reports that Amazon is misapplying local taxes on some sales that should be tax-exempt. As it is now, each municipality has to contact Amazon individually — or any other online vendor — to educate the merchant on the details of their specific municipal tax code. A single online sales tax administrator for Alaska municipalities would improve the situation.

As to Amazon specifically, in a few cases the online retailer is collecting sales tax for deliveries in Alaska because it has a physical connection — a nexus — in that city or borough, such as an Amazon subsidiary or affiliate that does business in the municipality. Unless a municipal code is written as a sales and use tax, or otherwise specifically addresses online sales, merchants such as Amazon are not legally obligated to collect the city or borough sales tax.

How can online merchants determine which municipality gets the taxes?

One significant problem that Alaska municipalities must overcome is to construct a user-friendly online mapping system so that merchants can accurately determine the correct tax jurisdiction. Such as, a buyer may have a Soldotna ZIP code and mailing address but does not live within the city of Soldotna and believes they should not be liable for Soldotna city sales taxes. The same can be said for Interior residents with a North Pole mailing address. ZIP+4, unfortunately, does not always match municipal boundaries in Alaska, and therefore cannot be used for determining the tax jurisdictions. Other states and third-party contractors provide online mapping tools for sellers, and third-party vendors could help Alaska develop one that covers the entire state. In addition to creating the “tax look-up map” (as it is called in the state of Washington), Alaska municipalities would have to establish a system for keeping the map current with new subdivisions, new addresses for businesses and residences, annexations and such.

Can online vendors handle additional, specific sales taxes?

Yes, such as on alcohol or tobacco taxes, in addition to general sales taxes. Other states levy additional taxes on certain items, such as alcohol, and nothing in the Streamlined Sales Tax Project argues against such additional sales or excise taxes. The third-party vendors that offer administration software for states can accommodate such taxes.

What are some of the tax code decisions that AML research undertook?

Taxation limits

- Several Alaska municipalities have in place a limit on the amount of a single transaction subject to sales tax. For example, in Juneau the sales tax stops charging after a single transaction (an invoice, not a single item) reaches \$12,000 (though there is no limit to



taxation of jewelry). In the Kenai Peninsula Borough, the cap is \$500. Alaska municipalities can maintain their disparate application of such “tax caps” and still have a reasonable chance of surviving a legal challenge should an online merchant want to contest the “undue burden” of navigating different tax limitations.

Point of taxation

- Alaska municipalities most certainly will need to define and adopt a common definition for the point of the taxation transaction, especially since this could affect the rate charged and where the tax is remitted. Such as, if a buyer receives the order at a post office in one city but takes it to their residence in another city, where did the taxable transaction occur, and which city gets the money? Where the item was delivered or where it was used? The same difficulty would apply to the online seller as it tries to determine the tax rate — it needs to know which address to check on the tax look-up map, the point of delivery or the residence of the buyer? The point of taxation as agreed to is the point of delivery.

Definitions

- Definitions should be consistent among participating municipalities for any tax-exemptions, such as food (taxed or not taxed, or divided between prepared and unprepared, and how to define those terms), sale-for-resale, purchases by senior citizens, manufacturing components, construction materials that will be incorporated into real property in the municipality, farming supplies, funeral supplies, medical equipment, over-the-counter drugs and medical items, sales to and/or by nonprofits, sales by government agencies. There is a document providing the Common Definitions for review.

Collection thresholds

- South Dakota sets a significantly higher minimum threshold for annual sales into the state by a remote merchant than for local businesses before the out-of-state business has to collect and remit sales taxes. Whatever Alaska municipalities decide needs to be consistent for all municipalities in the AML program. Otherwise, remote merchants could get caught up in a maze of different registration and reporting standards.
- For example, municipalities may want to exempt small-scale sellers from registering, collecting and remitting, such as businesses with less than \$2,500 a year of sales into the jurisdiction. An example would be an online jewelry maker in New York that might sell \$300 of goods into any one Alaska city in a year. How much do Alaska municipalities want to exempt occasional sellers from collecting sales tax? And should it be the same threshold for remote sellers as in-town businesses?
- The collection threshold has been set at \$100,000 in annual transaction revenue or 100 annual transaction statewide.

POSSIBLE WHEREAS/FINDINGS
(TAKEN FROM SOUTH DAKOTA LAW, in part)
SD ST § 10-64-1 legislative findings

WHEREAS, the inability to effectively collect sales tax from remote sellers who deliver personal property, products transferred electronically, or services directly 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

WHEREAS, the harm from the loss of revenue is especially serious in Alaska because the state has no broad-based tax, and sales tax revenues are essential in funding the provision of services by local governments; and

WHEREAS, despite the fact that a use tax is owed on tangible personal property within certain jurisdictions in the State of Alaska, any product or service delivered physically or transferred electronically for use in this state can be marketed by many remote sellers as tax free, and lack the local government's sales tax; and

WHEREAS, the structural advantages of 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 is likely to increase in the near future; 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 generally, and the needs of 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 municipalities; and

WHEREAS, the United States Supreme Court decided on June 21, 2018 in the case South Dakota v. Wayfair that the United States Constitution no longer prohibited the levying of sales tax on mail order or internet purchases from businesses located outside the state of Alaska who did not have a physical presence within the taxing jurisdiction; and

BE IT RESOLVED, it is the intent of this municipality to apply their respective sales tax obligations to the limit of federal and state constitutional doctrines.

XX.XX.010. - Certain sellers located outside of state required to collect and remit sales taxes—

Criteria

Any seller, who does not have a physical presence in the State of Alaska, selling tangible or intangible personal property, digital products, or services rendered within or delivered to the taxing jurisdiction is subject to the Model Code Section XXX, and shall remit the sales tax and shall follow all applicable procedures and requirements of law as if the seller had a physical presence in the state of Alaska or taxing jurisdiction, provided the seller has met one of the following criteria 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, digital product or services delivered into the state 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.

If a seller's gross statewide sales, or a seller's marketplace facilitator's gross statewide sales, from the previous calendar year or the current calendar year meets or exceeds the above criteria, the seller is expected to register with [the commission] and collect and remit sales tax at the point the conditions herein are met, including from the prior calendar year.

XX.XX.020. - Prospective obligation to collect or remit tax

The obligations to collect and remit sales tax required by this [chapter] are applicable upon the effective date of the Model Code. Remittance should occur not later than 30 days of the effective date.

XX.XX.030. - Tax jurisdiction – Point of Taxation

The rate of tax to be added to the sale price is based on the location where the property, digital product, or service, is received. Delivery of property, product, or service can be transferred physically or electronically.

XX.XX.040. – Authority to enter into Compact.

The mayor is authorized to enter into the Alaska Municipal Remote Sellers Sales Tax Compact (Compact) with one or more municipalities in the state to simplify and modernize sales tax administration in order to substantial reduce the burden of tax compliance on remote sellers who establish economic nexus with the borough pursuant to [XX.XX.010]. In furtherance of the Compact, the mayor or mayor's designee is authorized to act jointly with other municipalities that are members of the Compact to establish standards for certification of a certified service provider and certified automated system and establish performance, reporting, and standards

for remote sellers. Remote sellers that are subject to the jurisdiction's tax pursuant to [XX.XX.010] shall report, remit, and comply with standards, including audit authority, promulgated by the Alaska Municipal Remote Sellers Sales Tax Commission (Commission).

XX.XX.050. - Remote Sellers Sales Tax Commission; Delegation of Authority

A remote seller who establishes economic nexus with the borough pursuant to [XX.XX.010] will report and remit to the Alaska Municipal Remote Sellers Sales Tax Commission. The Commission is authorized to collect remote sellers' sales tax on behalf of the borough and the cities in the borough. The commission will remit collected sales tax to the borough and the cities in the borough and provide a quarterly collection and compliance report per the terms of the Compact. The borough may withdraw by ordinance from the Compact at any time.

XX.XX.060. – Declaratory Judgment

Notwithstanding any other provision of law, and whether or not the borough or the Commission] initiates an audit or other tax collection procedure, the Commission and/or taxing jurisdiction may bring a declaratory judgment action against any person believed to meet the criteria of [XX.XX.010] 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

XX.XX.070. – Sellers with a physical presence in the borough.

Sellers with a physical presence in the borough shall report, remit, and comply with standards, including audit authority, promulgated by this chapter to the borough's finance department. This section applies to all sellers with a physical presence in the borough even if the seller also has taxable online sales.

XX.XX.080. – Definitions

This chapter hereby adopts by reference the Commission's Common Definitions for sales tax administration.

“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:
"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.

Receive or Receipt” means:

- A. Taking possession of tangible personal property,
- 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 possession by a shipping company on behalf of the purchaser.

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

4.30.050 Purchase orders.

A. The city manager is responsible for the establishment of a purchasing system under which all merchandise, supplies and services will be purchased for the city, except for the school district.

B. Purchase orders shall be issued upon requisitions signed by the head of the division requesting the purchase. All requisitions shall be filed with the purchasing agent and no purchase shall be made until an order has been obtained from him/her.

C. In the absence of the city manager, a person designated in writing by him/her, is hereby authorized to sign purchase orders for supplies which do not exceed five hundred dollars in value, in conformance with control procedures to be established by the city manager for that purpose. (Ord. 86-10 § 1, 1986.)