Sara Peterson

From: Alaska Municipal League <nils@akml.org>
Sent: Monday, April 29, 2019 10:32 AM
To: Sara Peterson
Subject: Online Sales Tax Discussion

ALASKA MUNICIPAL LEAGUE
Alaska Conference of Mayors

Online Sales Tax Negotiation - Governance and Definitions

AML has confirmed June 6 in Anchorage for our negotiation of sales tax definitions, and governance of a statewide, single level online sales tax authority. Here is a very draft agenda, which I hope gives us enough time to work through these issues.

We have indicated in the attached who should plan to attend. This includes the manager, finance officer or sales tax administrator, or your attorney, but ultimately it will be someone with enough technical knowledge to navigate the issues, with enough authority to at least indicate some level of comfort with the outcome. We want to get to consensus, but commitment isn't necessary and will be reserved for your individual council or assembly.

We understand that not everyone will be able to travel in for this. Rest assured, we still want to hear from you. Let us know if you can attend, and if not please do feel free to call me and we can discuss our planning to date. Once the session is over, we'll also follow up with all communities. We'll have drafts for your review ahead of time.

We'll have one seat reserved for each municipality, with a speaking representative at the table. Your delegation can be larger than this, and included in seating near the representative. I believe that some communities may have proxy voting, depending on the role of the borough and/or attorney.

I will chair the negotiation, though really that feels more formal than it has to be. I'm hoping for collaboration and will lean on each of you to help us get to success.

The meeting will take place at the Hotel Captain Cook, and we have a small room block reserved for the evening of June 5 so that we can begin early the next morning. Feel free to take advantage of other options, too.

- Coffee, snacks and lunch will be provided on the 6th
- A $100 lodging/travel stipend per community will be provided for those who request it – please notify Shawn Myers

Let me know if you have questions! We've provided an FAQ about online sales tax, below.

Nils Andreassen
nils@akml.org or 907-586-1325

RSVP

Frequently Asked Questions

Meeting Space: Hotel Captain Cook – Fore Deck

Hotel Reservation information:
Room Rate: $199.00 plus taxes
Cut-off date for room block is May 8th
Reservations can be made by calling 1-907-876-6000 or 1-800-843-1950 or online at Hotel Captain Cook-AMLJUNE
Group Code: AMLJUNE

Negotiating Local Inter-Governmental Agreement on Online Sales Tax

June 6, 2019

Invited to attend are 1-2 representatives from each municipality with taxing authority. These should be finance officers, managers and/or attorneys able to make decisions consistent with their individual interests. That doesn't mean that your participation preempts your mayor, council or assembly from approving the decision, but it is critical that we have people at the table who can negotiate in good faith.

Wednesday, June 5

6pm	Sponsor Dinner and Update	

Thursday, June 6

8:30am	Introductions	
9am	Online Sales Tax Update – Goals and Research to Date	Nils Andreassen
9:30am	Streamlining Definitions – Review of Draft	Larry Persily
10am	Break	
10:15am	Definitions – negotiation	Nils Andreassen
12pm	Lunch – working, depending on progress	
1pm	Definitions – negotiation	
2:30pm	Break	
3pm	Governance – discussion of draft	Nils Andreassen
4:30pm	Adjourn	

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. But we're used to that.

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.

By working together, Alaska cities and boroughs stand the best chance of crafting a workable sales and use 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 plans to provide 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.

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 (many?) cases it is collecting tax only on Amazon's own goods and not on sales of third-party merchandise. A coordinated, AML-led approach could remedy this shortcoming by directing 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 legal connection — a nexus — in that city or borough, such as an Amazon subsidiary or affiliate that does business in the municipality. But in most cases in Alaska, Amazon is collecting sales tax voluntarily. 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.

What's a 'use tax,' and does it apply to Alaska municipalities?

A "use tax," as part of a "sales and use tax," makes it clear under the law that the tax applies to goods regardless whether they were sold over the counter in the jurisdiction or delivered into the jurisdiction for use. The Streamlined Sales Tax Project model code recommends participating states adopt a sales and use tax. Some Alaska municipalities already have it in code, but most do not. It is unknown at this time if the AML online sales tax project will adopt sales and use tax as its recommended language for municipalities.

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 Alaska municipalities will have to make?

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. It is unknown at this time if 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? This definition will need to be consistent for all Alaska municipalities that choose to participate in the AML effort.

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. The definitions will require a lot of work between municipalities.

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?

Examples of taxable decision items

- Do municipalities want to collect sales tax on motor vehicles, boats and airplanes imported into the municipality?
- How will municipalities treat commissions that are retained by online sellers? Is the tax applied to the total price of the goods, or only on the net received by the seller after the commission is deducted?
- Are delivery charges taxable if they are listed separately from the purchase price?
- Are software downloads taxable, such as music and apps and streaming services?
- Are Amazon Prime membership dues taxable?
- Are online subscriptions taxable, such as news sites?

Administrative issues

- How will municipalities handle refunds of sales taxes paid in error by the seller or collected in error by an online seller? Who will issue the refund: The seller or the municipality?
- Will municipalities allow a discount or "commission" of tax collections, intended to partially compensate the merchant for its costs of bookkeeping as the municipality's tax collector? Should this discount, or retention, be the same for online and local vendors? Many Alaska cities and boroughs allow their local merchants to hold back a small percentage as compensation for their work as a tax collector.
- Can the AML project accommodate seasonal adjustments to a municipality's tax rates, or special "tax holidays" as municipalities sometimes offer for back-to-school shopping or other annual categories?
- Are intrastate online sales treated differently than interstate sales?