City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

MEMORANDUM

To: Mayor Paxton and Assembly Members
Thru: John Leach, Municipal Administrator

From: Jay Sweeney, Chief Financial and Administrative Officer

Date: April 3, 2020

Subject: Amendment of Title 4 of the Sitka General Code to Provide for Sales
Taxation of Sales made in Sitka By Remote Sellers

Background

This ordinance is in conjunction with a Resolution, approved by the Assembly in
December 2019, to enter into a voluntary Intergovernmental Agreement with other
Municipalities in Alaska for remote seller (e-commerce) sales taxation.

(1) Attached to this Memorandum is a FAQ document prepared by the Alaska
Municipal League in June 2019, which provides excellent background.

(2) The genesis of the current effort to collect sales taxes from e-commerce
merchants stems from a United States Supreme Court decision in *South Dakota
vs. Wayfair*. In that case, the Supreme Court ruled that States could pass
legislation requiring sales taxes to be collected and remitted on e-commerce, <u>so
long as the legislation did not present an undue burden to interstate commerce</u>.
A reasonable burden was determined to be a centralized agency within each
State for sales tax reporting and remittance, and, uniform definitions within each
governing aspects of e-commerce.

(3) Alaska is unique among the 50 States in that it is the only State to not have a
Statewide sales tax yet allows Municipalities to have local sales taxes. As a
result, Alaska Municipalities have widely dissimilar sales tax codes, with no two
the same. Legal counsel retained by the Alaska Municipal League opined that
Alaska's patchwork system of different municipal codes does present an undue
burden to internet commerce and, as a result, individual Municipalities would
likely not prevail if they attempted to compel e-commerce merchants ("remote
sellers") to collect and remit sales taxes. The legal counsel did advise, however,

that if Municipalities organized an intergovernmental agency to serve as a single collection and reporting point for e-commerce sales taxation, that it would not present an undue burden.

(4) Based on advice from its Legal Counsel, the Alaska Municipal League spearheaded an initiative to assist Municipalities in developing and forming an intergovernmental agency to serve as a single collection and reporting point for e-commerce sales taxation. That effort culminated with the ceremonial signing of participation conferences by the initial adopting Municipalities at the Alaska Municipal League Winter Conference in Anchorage, in November 2019. Major entities who were initial adoptees of the agreement include; the City and Borough of Juneau, Ketchikan Gateway Borough, Kenai Peninsula Borough, Kodiak City and City and Borough of Wrangell.

(5) For City and Borough of Sitka, Alaska ("CBS") to become an active participant in the intergovernmental agreement and to begin receiving sales tax remittances, the Assembly would need to pass an Ordinance to accompany its initial Resolution to join the Alaska Remote Seller Sales Tax Commission ("ARSSTC"). The Assembly passed Resolution 2019-27 on December 3, 2019 (attached), which documented the Municipality's intent to join the ARSSTC, and, committed the Municipality to passing an accompanying ordinance modifying its SGC to allow for sales taxation of remote sellers, and, adoption of uniform definitions as they apply to remote sellers and e-commerce.

Analysis

(1) Sitka's ability to continue to collect sales tax on internet-based sales now rests on whether or not the CBS Assembly decides to pass the attached ordinance modifying Title 4 of the Sitka General Code ("SGC") to allow for sales taxation of remote sellers, and, adoption of uniform definitions as they apply to remote sellers and e-commerce.

(2) If the Assembly approves entering into the Agreement, the entity formed through the Agreement shall serve as the single Statewide reporting and collection point for all e-commerce sales in Alaska. Sitka would stand to collect additional sales tax revenue above the amount currently being voluntarily remitted. If, however, the Assembly does not approve entering into the Agreement, Sitka stands to potentially lose the roughly $300,000 a year in voluntary sales tax remittances from e-commerce merchants.

(3) Sitka could lose voluntary sales tax remittances from remote sellers it is now receiving, because those sellers (that are voluntary remitting to Sitka) would have a legitimate argument that remitting directly to Sitka constitutes an undue burden on interstate commerce. As the ARSSTC represents the mechanism for reporting and remitting sales tax collections in Alaska. To enforce the existing voluntary remittances, should remote sellers choose to cease making them, Sitka would

need to litigate. Such litigation would be very expensive, time consuming, and would likely be unsuccessful.

(4) The ARSSTC has advised, that Sitka is not legally or contractually bound by passage of Resolution 2019-27 to complete passage of the accompanying ordinance modifying SGC to allow for sales taxation of remote sellers, and, adoption of uniform definitions as they apply to remote sellers and e-commerce. Were the Assembly to decide that it is not in the best interest of Sitka to adopt the Ordinance at this time, Sitka could withdraw from the Commission by Passage of a Resolution to do so.

(5) There is a primary "pro" and "con" to passage of the ordinance, and, both need to be identified and considered.

   a. The "pro" to passage of the ordinance is that it "levels the playing field" for local brick and mortar merchants trying to compete with e-commerce. Remote sellers have a 5%/6% immediate, built-in price advantage because they don't have to charge sales tax. This means that local merchants, who already have much larger overhead costs due to their physical store presence, must reduce selling prices to be price competitive. In many cases, local merchant profit margins are so slim already that lowering their selling price by 5%/6% means selling at a loss.
   b. The "con" to passage of the ordinance is that costs to Sitka residents for items purchased from remote sellers will increase by 5%/6% (for those remote sellers not already voluntarily remitting). For Sitkans already dealing with high costs of living and now faced with unemployment due to the covid-19 pandemic, the ability to reduce household expenses by any means is essential and purchasing from remote sellers is an effective way to do so.

Fiscal Note

(1) The exact financial impact of either fully participating in the ARSSTC, or, in withdrawing from it, can only be estimated. This is because such estimates depend, in turn, on either an estimate of potentially taxable sales by remote sellers in Sitka, or, assumptions as to whether or not remote sellers will continue to voluntarily collect and remit sales taxes to Sitka.

(2) The Finance Department estimates that the Municipality stands to gain an additional $200,000 in annual sales tax revenues if the ordinance is passed and Sitka becomes a fully active participant in the ARSSTC. This is provided, however, that Sitka's economy fully recovers from the economic impacts of the covid-19 pandemic.

(3) The Finance Department further estimates that the Municipality potentially stands to lose $300,000 in annual voluntary sales tax remittances we are already

receiving. Again, this is provided, however, that Sitka's economy fully recovers from the economic impacts of the covid-19 pandemic. If the Assembly chooses not to adopt the ordinance and fully participate in the ASRRTC and remote sellers do continue to voluntarily collect and remit sales tax, if the economy does not fully and rapidly recover, overall sales tax remittances will be affected, including those from remote sellers.

Recommendation

Adopt an ordinance amending Title 4 "Revenue and Finance", by adding a new Chapter 4.10 "Alaska Remote Seller Sales Tax", to the SGC to provide for taxation of sales made by remote sellers in CBS.