

Presented By:
City Clerk

Action Taken:
Yes____
No____
Abstain____

**CITY OF NOME
ORDINANCE NO. O-21-04-01**

**AN ORDINANCE AMENDING CHAPTER 17.15.030 ADOPTION OF ALASKA REMOTE
SELLERS SALES TAX CODE**

WHEREAS, the City of Nome is a member of the Alaska Remote Seller Sales Tax Commission (Commission); and,

WHEREAS, from time to time, the Commission Board of Directors updates the Uniform Remote Seller Sales Tax Code to address issues that arise in the administration of the code; and,

WHEREAS, the City of Nome adopted the January 6, 2020 edition of the Uniform Remote Seller Sales Tax Code by reference through O-20-02-01 on March 9, 2020; and,

WHEREAS, the Commission adopted an updated edition to the Uniform Remote Sellers Sales Tax Code on February 24, 2021;

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF NOME:

Section 1. Amendment of section 17.15.030 Section 17.15.030 of the Code of Ordinances of Nome, Alaska is hereby amended to read as follows [additions are underlined, deletions are overstruck]:

17.15.030 Adoption of Alaska Remote Sellers Sales Tax Code

The city adopts by reference the ~~January 6, 2020~~, February 24, 2021 Edition of all provisions of the Alaska Remote Sellers Sales Tax Code (including the definitional section included in NCO Section 17.15.020 and definitions included in NCO Section 17.10.180) and that portion of the supplemental definitions thereto not included in NCO Section 17.10.180.

Section 2. Amendment of section 17.10.180. The definitions of “Marketplace Facilitator”, “Physical Presence”, “Remote Seller” and “Resale of Services” in Section 17.10.180 of the Nome Code of Ordinances are hereby amended to read as follows: [deleted language is struck and new language underlined]

17.10.180 Definitions.

"Marketplace Facilitator" means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller's property, product or services through a physical or electronic marketplace operated by the person, and engages:

(1) Directly or indirectly, through one or more affiliated persons in any of the following:

(A) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;

(B) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;

(C) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or

(D) 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

(2) In any of the following activities with respect to the seller's products:

(A) Payment processing services;

(B) Fulfillment or storage services;

(C) Listing products for sale;

(D) Setting prices;

(E) Branding sales as those of the marketplace facilitator;

(F) Order taking;

(G) Advertising or promotion; or

(H) Providing customer service or accepting or assisting with returns or exchanges.

"Physical presence" for purposes of section .040 of the Alaska Remote Sellers Uniform Sales Tax Code means a remote seller or marketplace facilitator who establishes any one or more of the following within a ~~local~~ taxing member jurisdiction:

(1) Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the ~~local~~ taxing member jurisdiction;

(2) Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the ~~local taxing member~~ jurisdiction or engages in activities in this state that are significantly associated with the seller's ability to establish or maintain a market for its products in this state.

(3) Provides services or holds inventory within the boundaries of the ~~local taxing member~~ jurisdiction.

(4) Rents or Leases property located within the boundaries of the ~~local taxing member~~ jurisdiction.

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

"Remote Seller" means a seller or marketplace facilitator making sales of goods or services for delivery delivered within the State of Alaska, without having a physical presence in ~~a taxing the member jurisdiction, in~~ which delivery is being made. ~~or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.~~

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

Section 3. Amendment of section 17.15.020 Section 17.15.020 of the Code of Ordinances of Nome, Alaska is hereby amended to read as follows [additions are underlined, deletions are overstruck]:

17.15.020 Definitions

A. When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter, have the following meanings:

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

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

"Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

“Delivery Charges” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

“Goods for resale” means:

(1) The sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.

(2) Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.

(3) Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

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

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

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

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

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

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

(1) When the product is not received or paid for by the purchaser at a business location of a remote seller in a ~~Taxing~~ Member Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the remote seller or marketplace facilitator.

(2) When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a ~~Taxing~~ Member Jurisdiction the sale is considered to have been made in the ~~Taxing~~ Member Jurisdiction where the purchaser is present even if delivery of the product takes place in another ~~Taxing~~ Member Jurisdiction. Such sales are reported and tax remitted directly to the ~~Taxing~~ Member Jurisdiction not to the Commission.

(3) When the service is not received by the purchaser at a business location of a remote seller, the service is considered delivered to the location where the purchaser receives the service.

~~(3)~~ (4) For products or services transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery of the sale to be the billing address of the buyer.

“Product-based exemptions” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

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

“Remote sales” means sales of goods or services by a remote seller.

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise into a member jurisdiction ~~(but excluding any that are rendered physically within the taxing jurisdiction outside the taxing jurisdiction,~~ including but not limited to:

(1) Professional services;

(2) Services in which a sale of property or product may be involved, including property or products made to order;

(3) Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;

(4) The sale of transportation services;

(5) Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;

(6) Advertising, maintenance, recreation, amusement, and craftsman services.

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

Section 4. Amendment of section 17.10.100(c) Section 17.10.100(c) of the Code of Ordinances of Nome, Alaska is hereby amended to read as follows [additions are underlined]:

17.10.100 Penalties and interest.

(c) Regardless of whether any taxes were due, the penalty for late filing of the sales tax return shall be twenty-five dollars per month until a total of one-hundred dollars (\$100) has been reached.

Section 5. Effective Date. This ordinance is effective upon passage.

APPROVED and **SIGNED** the 26th day of April, 2021.

JOHN K. HANDELAND, Mayor

ATTEST:

BRYANT HAMMOND, City Clerk