

1st Reading: August 12, 2019
2nd Reading: August 26, 2019

Presented By:
City Clerk

Action Taken:
Yes 5
No 0
Abstain 0

CITY OF NOME, ALASKA

ORDINANCE NO. O-19-08-01 (Amended)

AN ORDINANCE AMENDING NOME CODE OF ORDINANCES CHAPTER 17.10 TO CLARIFY REMOTE SELLERS' AND MARKETPLACE FACILITATORS' OBLIGATION TO COLLECT AND REMIT SALES TAX

WHEREAS, retail sellers making deliveries to buyers in the City of Nome benefit from municipal services provided by the City; and

WHEREAS, exempting out-of-town retailers from the obligation to collect and remit sales taxes provides these retailers an unfair competitive advantage over local retailers; and

WHEREAS, compelling collection and remittance of sales taxes by out-of-town retailers who regularly sell to buyers in the City and State of Alaska does not unconstitutionally intrude upon Congress's authority to regulate commerce; and

WHEREAS, marketplace facilitator rely upon a reputation as a retailer or marketplace and bring to bear resources and branding to facilitate sales by third-party sellers, with such sales sometimes so seamlessly integrated into the buyer's experience that the buyer is unaware the marketplace facilitator is not the seller; and

WHEREAS, marketplace facilitators are capable of and should be responsible for ensuring that sales brokered by the marketplace facilitator comply with applicable laws, including the collection and remittance of sales taxes;

NOW, THEREFORE, be it ordained by the Nome Common Council that Chapter 17.10 of the Nome Code of Ordinances be amended as follows:

Section 1. Classification. This is a Code ordinance.

Section 2. Amendment of Section 17.10.080. Title 17, Chapter 10, Section 080 of the Nome Code of Ordinances is hereby amended by the addition of a new subsection (c), to read as follows:

(c) If a marketplace facilitator demonstrates to the clerk's reasonable satisfaction that the marketplace facilitator made a reasonable effort to obtain accurate information from the marketplace seller about a sale and that the marketplace facilitator's failure to collect and remit the correct tax was due to the marketplace seller providing incorrect information to the marketplace facilitator, the marketplace facilitator shall be relieved of liability for that sale.

Section 3. Amendment of Section 17.10.170. Title 17, Chapter 10, Section 170 of the Nome Code of Ordinances is hereby amended to read as follows [deleted text is ~~overstruck~~; added text is underlined]:

17.10.170 Situs of taxable transaction.

(a) Whenever any element or constituent part of a retail sale or rental of goods or services occurs in the city, the transaction shall be construed as occurring in the city for tax purposes except as provided in ~~subsection (b) below~~ this section.

(b) Sales and rentals of goods and services resulting from orders received from a buyer outside the city by mail, telephone or other similar public modes of communications shall not be construed as a taxable transaction if delivery of the ordered goods ~~ordered to the buyer~~ is made outside the city by mail or common carrier, or if the performance of the service ordered occurs wholly outside the city. ~~Any fractional portion of services performed inside the city shall not be included in this exception, and shall be fully taxable.~~

(c) If a service is performed both inside and outside of the city, that fractional portion of the service performed outside the city shall be excepted from taxation, except that the full selling price of the service shall be taxed if the service commences and terminates in the city.

(~~e~~) Nothing in this section is intended to create a taxable transaction if the goods sold or rented do not reside, or have never been within, the city of Nome's boundaries, and there is no intention for the goods to ever enter into city boundaries.

(e) A sale is construed as not occurring in the city when the seller has not had any physical presence within the city during the current or previous calendar year, and:

(1) the seller's gross revenue from sale(s) of property, digital product, or services delivered into the state is less than \$100,000 in the current and previous calendar year; and

(2) in the current and previous calendar year, the seller sold property, digital products, or services delivered into the state in fewer than 100 separate transactions.

(f) For the sales where delivery occurs by electronic delivery to, or access from, the buyer's electronic device, there shall be a rebuttable presumption that the situs of the sale is the buyer's billing address.

Section 4. Amendment of Section 17.10.180. Title 17, Chapter 10, Section 180 of the Nome Code of Ordinances is hereby amended to read as follows [deleted text is ~~overstruck~~; added text is underlined]:

17.10.180 Definitions.

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section:

“Buyer” means the person who in the ordinary meaning of the term takes title to, takes possession of, or buys property or receives services for valuable consideration.

“Charitable” means an entity eligible under the Internal Revenue Code to receive tax-deductible donations (e.g., 501(c)(3) and volunteer fire company or veteran organization 501(c)(4)).

“Common carrier” means a person or entity engaged in transporting passengers or goods or both for valuable consideration in the normal course of the business of that person or entity, or a seller engaged in transporting directly to a common carrier goods sold by him or her in a retail sales transaction directly to a buyer residing outside the city.

“Marketplace” is a physical or electronic setting, including, but not limited to, a store, a booth, an Internet website or exchange, catalog, or software application, where goods or services are offered for sale. A marketplace does not include the digital network, as defined by AS 28.23.180, of a transportation network company.

“In-state” means in the State of Alaska, and as applied to sale means any sale where the buyer receives custody, control, access to, or use of the goods in the state and where the buyer receives a service, or the benefit of a service, in the state.

“Marketplace facilitator” means a person who owns or maintains a marketplace and who with respect to a marketplace seller's goods or services, transmits or otherwise communicates the offer or acceptance, and:

- (1) provides payment processing services;
- (2) provides fulfillment or storage services;
- (3) sets prices;
- (4) brands sales as those of the marketplace facilitator;
- (5) takes orders; or
- (6) provides customer service or assists with returns or exchanges.

“Marketplace seller” means a seller who uses a marketplace to facilitate a sale.

“Merchandise” means tangible personal property offered for consideration by a seller.

“Merchandise acquired for resale” means merchandise purchased for the purpose of selling in an unaltered form to another buyer on a retail basis.

“Merchant” means an individual or organization engaged in the sale of tangible personal property.

“Rental” means allowing the use of tangible personal or real property for a specified length of time.

“Retail sales transaction” means any sale, lease, rental transfer or assignment of any right, title or interest in any goods, personal property or real property and any provision of labor or services, for valuable consideration, for any purpose except resale without alteration by a buyer presenting a resale certificate issued pursuant to NCO Section 17.10.175 applicable to the sales or service transaction. In determining whether an item or service is being purchased for resale without alteration in the regular course of the business of the buyer, the vendor shall be responsible to: (1) require the buyer to present the valid resale certificate and (2) verify that the resale certificate applies to the good or service being purchased [make a diligent inquiry into the purpose of the purchase by the buyer], and shall be held to the standard of inquiry expected of a reasonable and prudent person under similar circumstances acting in good faith toward the taxing authority.

“Sale” is meant to include each of the following categories of commercial activities:

- (1) The transference of ownership of tangible or intangible personal or real property for valuable consideration.
- (2) The rental or lease of tangible or intangible personal or real property for a specified length of time in exchange for valuable consideration.
- (3) The provision of services exclusive of those provided pursuant to an employer-employee relationship for valuable consideration.

“Seller” means every person making a retail sale transaction to a buyer or consumer, every person renting real or personal property, and every person performing services, for valuable consideration. In the event that retail sales transactions are being conducted in the name of a corporation, partnership, cooperative, association, joint venture, or other entity, the “seller” for purposes of responsibility and liability for the collection and remittance of sales tax shall include every director, officer and partner without exception, and also shall include every employee, agent and other person in a position of control and authority to collect and remit said sales taxes to the city. Except for sales where the

clerk has been provided satisfactory evidence that the marketplace seller collected and remitted the tax levied by this chapter, a marketplace facilitator shall be considered a seller for all sales facilitated by the marketplace facilitator, brokered by the marketplace facilitator, or otherwise conducted through the marketplace facilitator's marketplace.

“Selling price” means the fair market value of all detriment incurred by the buyer on the retail sale, including cash payments, debt obligations, and the value of exchanged items or services.

“Services” means all services of every manner and description that are performed or furnished for valuable consideration whether in conjunction with the sale of goods or not, but does not include services rendered by an employee to an employer.

“Taxable sale” means:

(1) All sales for which an exception has not been established pursuant to NCO Section 17.10.020.

(2) All sales for which an exemption has not been granted pursuant to NCO Section 17.10.030.

Used Exclusively for Religious Purposes. Retail sales and rentals of goods and services “used exclusively for religious purposes” means only goods, services or rentals which are used for, consumed in, or rendered only for the construction, alteration, maintenance, repair or outfitting of the following described property legally possessed by and used exclusively by a religious organization: the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization; a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital; lots supporting and adjacent to a structure or residence mentioned above in this subsection, which are necessary to convenient use of said structure or residence; and lots required by city ordinance for parking near a structure used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital.

Section 5. No Retroactivity. This ordinance is intended to clarify application of Section 17.10.010 to sales where the seller is not physically located within the City of Nome and to clarify the obligations of marketplace facilitators. Any sale preceding the effective date of this ordinance shall not be affected by any amendments to the Nome Code of Ordinances accomplished by this ordinance.

Section 6. Effective Date. This ordinance shall be effective on the first day of the first calendar month following the date the ordinance is passed.

APPROVED and SIGNED this 26th day of August, 2019.



RICHARD BENEVILLE
Mayor

ATTEST:



BRYANT HAMMOND
Clerk