

SENATE BILL NO. 366

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE BY REQUEST

Introduced: 3/17/04
Referred: Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the levy and collection of sales and use taxes, to the levy and**
2 **collection of municipal sales and use taxes, and to municipal sales and use taxes on**
3 **alcoholic beverages; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 04.21.010(c) is amended to read:

6 (c) A municipality may not impose taxes on alcoholic beverages except a

7 (1) property tax on alcoholic beverage inventories;

8 (2) sales **and use tax levied under AS 29.45.650 or 29.45.700** [TAX
9 ON ALCOHOLIC BEVERAGE SALES IF SALES TAXES ARE IMPOSED ON
10 OTHER SALES WITHIN THE MUNICIPALITY];

11 (3) sales tax on alcoholic beverage sales that was in effect before
12 July 1, 1985 [; AND

13 (4) SALES AND USE TAX ON ALCOHOLIC BEVERAGES IF THE
14 SALE OF ALCOHOLIC BEVERAGES WITHIN THE MUNICIPALITY HAS

1 BEEN PROHIBITED UNDER AS 04.11.491(a)(1), (4), OR (5)].

2 * **Sec. 2.** AS 29.05.210(b) is amended to read:

3 (b) The department shall provide assistance to each borough and unified
4 municipality incorporated after December 31, 1985, in

5 (1) establishing the initial sales and use tax assessment [AND
6 COLLECTION DEPARTMENT] if the borough or unified municipality has adopted a
7 sales or use tax;

8 (2) determining the initial property tax assessment roll if the borough
9 or unified municipality has adopted a property tax, including contracting for appraisals
10 of property needed to complete the initial assessment.

11 * **Sec. 3.** AS 29.10.200(51) is amended to read:

12 (51) AS 29.45.650 [AS 29.45.650(c), (d), (e), (f), (i), AND (j)] (sales
13 and use tax);

14 * **Sec. 4.** AS 29.10.200(52) is amended to read:

15 (52) AS 29.45.700 [AS 29.45.700(d) AND (e)] (sales and use tax);

16 * **Sec. 5.** AS 29.35.110(a) is amended to read:

17 (a) Borough revenues received through taxes **levied** [COLLECTED] on an
18 areawide basis by the borough may be expended on general administrative costs and
19 on areawide functions only. Borough revenues received through taxes **levied**
20 [COLLECTED] on a nonareawide basis may be expended on general administrative
21 costs and functions that render service only to the area outside all cities in the
22 borough.

23 * **Sec. 6.** AS 29.35.170 is amended to read:

24 **Sec. 29.35.170. Assessment and collection of taxes.** (a) A borough shall
25 assess [AND COLLECT] property [, SALES, AND USE] taxes **and collect taxes,**
26 **other than sales and use taxes,** that are levied in its boundaries, subject to AS 29.45.

27 (b) Taxes, **other than sales and use taxes,** levied by a city shall be collected
28 by a borough and returned in full to the levying city. This subsection applies to home
29 rule and general law municipalities.

30 * **Sec. 7.** AS 29.45.650 is repealed and reenacted to read:

31 **Sec. 29.45.650. Sales and use tax.** (a) Except as provided in AS 29.45.750, a

1 borough may levy a sales and use tax. If a borough levies a sales and use tax, it must
2 conform exactly to the statewide sales and use tax levied and collected under
3 AS 43.44, except that the municipal sales and use tax may be levied at any rate.

4 (b) The Department of Revenue shall collect a sales and use tax levied under
5 this section and remit the proceeds to the municipality. The Department of Revenue
6 may use its administrative authority under AS 43.05 and its enforcement and
7 collection authority under AS 43.10 to collect a sales and use tax levied under this
8 section.

9 * **Sec. 8.** AS 29.45.660(a) is amended to read:

10 (a) If the borough levies [AND COLLECTS] only a sales tax and use tax, the
11 assembly shall provide a notice substantially in the form set out in AS 29.45.020. In
12 providing notice under this subsection, the assembly shall substitute for the millage
13 equivalency its estimate of the equivalent sales tax rate for each of the categories of
14 financial assistance set out in AS 29.45.020. Notice shall be provided

15 (1) by publishing in a newspaper of general circulation in the borough
16 a copy of the notice once each week for a period of three successive weeks, with
17 publication to occur not later than 45 days after the final adoption of the borough's
18 budget; or

19 (2) if there is no newspaper of general circulation in the borough, by
20 posting a copy of the notice for at least 20 days in at least two public places in the
21 borough, with posting to occur not later than 45 days after the final adoption of the
22 borough's budget.

23 * **Sec. 9.** AS 29.45.670 is amended to read:

24 **Sec. 29.45.670. Referendum, adoption, and modification.** A new sales and
25 use tax or an increase in the rate of levy of a sales tax approved by ordinance does not
26 take effect until ratified by a majority of the voters at an election. **A municipality**
27 **may not require that a new sales and use tax or an increase in the rate of levy of a**
28 **sales tax approved by ordinance be ratified by more than 50 percent plus one of**
29 **the voters voting on the issue.**

30 * **Sec. 10.** AS 29.45.700 is repealed and reenacted to read:

31 **Sec. 29.45.700. Power of levy.** A city may levy a sales and use tax in the

1 manner provided for boroughs under AS 29.45.650.

2 * **Sec. 11.** AS 29.45.750(b) is amended to read:

3 (b) A municipality that levies [AND COLLECTS] a sales tax on mobile
4 telecommunications services shall do so in accordance with the provisions of 4 U.S.C.
5 116 - 126 (Mobile Telecommunications Sourcing Act).

6 * **Sec. 12.** AS 29.45.810(a) is amended to read:

7 (a) A party to a contract approved by the legislature as a result of submission
8 of a proposed contract developed under AS 43.82 or as a result of acts by the
9 legislature in implementing the purposes of AS 43.82, and the property, gas, products,
10 and activities associated with the approved qualified project that is subject to the
11 contract, are exempt, as specified in the contract, from all taxes identified in the
12 contract that would be levied [AND COLLECTED] by a municipality under state law
13 as a consequence of the participation by the party in the approved qualified project.

14 * **Sec. 13.** AS 43 is amended by adding a new chapter to read:

15 **Chapter 44. Sales and Use Tax.**

16 **Sec. 43.44.010. Levy of sales and use tax; tax rate.** (a) A sales tax is levied
17 on the sale, lease, or rental of tangible personal property and on the sale of services.

18 (b) A use tax is levied on the privilege of using in the state tangible personal
19 property or services. The use tax is not levied if the sales tax levied in (a) of this
20 section has been paid.

21 (c) The rate of the sales tax is four percent of the sales price. The rate of the
22 use tax is four percent of the purchase price.

23 **Sec. 43.44.020. Exemptions.** The tax levied under AS 43.44.010 does not
24 apply to

25 (1) tangible personal property or services that are

26 (A) explicitly exempted from taxation under another provision
27 of state law; or

28 (B) exempt from taxation under federal law, including sales to
29 the federal government, and purchases made with

30 (i) food coupons, food stamps, or other types of
31 certificates issued under 7 U.S.C. 2011 - 2036 (Food Stamp Program);

1 and

2 (ii) food instruments, food vouchers, or other types of
3 certificates issued under 42 U.S.C. 1786 (Special Supplemental
4 Nutrition Program for Women, Infants, and Children);

5 (2) medical care, including

6 (A) health care services provided by a person licensed or
7 certified to provide those services under AS 08 or a "health care facility" as
8 that term is defined in AS 08.68.395(g);

9 (B) drugs, durable medical equipment, mobility enhancing
10 equipment, and prosthetic devices obtained on prescription from a person
11 licensed to prescribe those goods under AS 08 or from a health care facility, as
12 that term is defined in AS 08.68.395(g);

13 (3) isolated or occasional sales, leases, or rentals of tangible personal
14 property or sales of services by a person who is not regularly engaged in the business
15 of selling, leasing, or renting similar personal property or services;

16 (4) sales, leases, or rentals of tangible personal property and sales of
17 services by or to the state or a political subdivision of the state;

18 (5) the sale of natural gas, water, electricity, steam, or refuse and
19 garbage collection service.

20 **Sec. 43.44.030. Collection of sales and use tax.** (a) A seller shall add the
21 amount of the sales tax levied by this chapter and the amount of any municipal sales
22 tax levied under AS 29.45 to the sales price of personal property or services subject to
23 the tax. The tax shall be stated separately on any receipt, invoice, or other record of
24 the transaction.

25 (b) A seller shall collect the sales tax levied by this chapter and any municipal
26 sales tax levied under AS 29.45 from the buyer and remit the tax collected to the
27 department not later than 30 days following the last day of the month in which the tax
28 was collected.

29 (c) A seller remitting the sales tax collected under this chapter to the
30 department within 30 days following the last day of the month in which the tax was
31 collected may retain one percent of the amount collected to cover expenses associated

1 with collecting and remitting the tax.

2 (d) To the fullest extent permitted under the Constitution of the United States,
3 a person whose sales are not subject to the sales tax is required to collect the use tax
4 from the purchaser and pay the tax collected to the department.

5 **Sec. 43.44.040. Payment of use tax.** A user subject to the use tax shall remit
6 the tax levied under this chapter and any municipal use tax levied under AS 29.45 to
7 the department not later than 30 days following the last day of the month in which the
8 taxable use occurs.

9 **Sec. 43.44.050. Accounting.** The department shall deposit the proceeds of the
10 tax levied under this chapter in the general fund of the state and remit the proceeds of
11 any municipal sales and use tax collected under AS 43.44.030(b) and 43.44.040 to the
12 municipality levying the tax.

13 **Sec. 43.44.060. Relationship to municipal levies.** (a) A municipality may
14 not levy a sales and use tax except as provided in AS 04.21.010(c), AS 29.45.650, or
15 29.45.700. The department shall collect sales and use taxes levied under
16 AS 29.45.650 or 29.45.700. A municipality may not collect a sales and use tax levied
17 under AS 29.45.650 or 29.45.700.

18 (b) From the total combined state and municipal sales and use taxes collected
19 within the boundaries of a municipality, the department shall remit to the municipality
20 the amount described under this subsection. If the rate of a sales and use tax levied by
21 a municipality is

22 (1) less than three percent, the department shall remit the amount of
23 the tax levied by the municipality;

24 (2) at least three percent but less than four percent, the department
25 shall remit the amount that would have been collected in the municipality if the sales
26 and use tax levy had been four percent;

27 (3) at least four percent but less than five percent, the department shall
28 remit the amount that would have been collected in the municipality if the sales and
29 use tax levy had been five percent;

30 (4) five percent or more, the department shall round up to the next
31 whole number and remit the amount that would have been collected in the

1 municipality if the sales and use tax levy had been that whole number; for example, if
 2 a municipality levied a sales and use tax at the rate of five percent, the department
 3 shall remit the amount that would have been collected under a six percent levy.

4 **Sec. 43.44.070. Computation of tax.** (a) The taxes levied under this chapter
 5 may be computed on an item or an invoice basis.

6 (b) The tax computation shall be

7 (1) carried to the third decimal place;

8 (2) rounded to a whole cent using a method that rounds up to the next
 9 cent whenever the third decimal place is greater than four; and

10 (3) made according to a rounding algorithm prescribed by the
 11 department.

12 **Sec. 43.44.080. Tax credit for sales or use tax paid to another state.** (a) A
 13 buyer liable for use tax on tangible personal property or services is entitled to a full
 14 credit for the amount of sales or use tax paid on the tangible personal property or
 15 services to another state.

16 (b) The credit shall be applied first against the amount of use tax levied under
 17 this chapter. Any unused portion of the credit shall then be applied against the amount
 18 of use tax levied by a municipality under AS 29.45.650 or 29.45.700.

19 **Sec. 43.44.090. Liability for tax.** (a) Except as provided in (d) and (e) of this
 20 section, a seller is liable for the sales tax on tangible personal property or services sold
 21 by the seller.

22 (b) A buyer is secondarily liable for the tax on tangible personal property or
 23 services sold to the buyer.

24 (c) A user is liable for the use tax.

25 (d) A seller that receives and accepts in good faith from a buyer a prescription
 26 for tangible personal property or services exempt from the tax under AS 43.44.020 is
 27 not liable for the sales tax on the tangible personal property or services prescribed.

28 (e) A seller that receives and accepts in good faith from a buyer a copy of the
 29 buyer's direct payment permit is not liable for the sales tax on the tangible personal
 30 property or services sold, leased, or rented to the buyer.

31 **Sec. 43.44.100. Registration.** A seller shall register with the department

1 before making a sale, lease, or rental of tangible personal property or a sale of services
2 that is taxable under this chapter.

3 **Sec. 43.44.110. Direct pay permit.** (a) The department may issue a direct
4 pay permit allowing the permit holder to purchase, lease, or rent taxable goods and
5 services without payment of tax to the seller at the time of purchase.

6 (b) The holder of a direct pay permit shall determine the tax due under this
7 chapter, and report and pay the tax directly to the department on a form and in a
8 format prescribed by the department.

9 **Sec. 43.44.199. Definitions.** In this chapter,

10 (1) "lease or rental" means any transfer of possession or control of
11 tangible personal property for a fixed or indeterminate term for consideration; a lease
12 or rental may include future options to purchase or extend; lease or rental

13 (A) does not include

14 (i) a transfer of possession or control of property under
15 a security agreement or deferred payment plan that requires the transfer
16 of title upon completion of the required payments;

17 (ii) a transfer of possession or control of property under
18 an agreement that requires the transfer of title upon completion of
19 required payments if payment of an option price does not exceed the
20 greater of \$100 or one percent of the total required payments; or

21 (iii) providing tangible personal property along with an
22 operator for a fixed or indeterminate period of time; a condition of this
23 exclusion is that the operator is necessary for the equipment to perform
24 as designed; for the purpose of this sub-subparagraph, an operator must
25 do more than maintain, inspect, or set up the tangible personal property;

26 (B) includes agreements covering motor vehicles and trailers
27 where the amount of consideration may be increased or decreased by reference
28 to the amount realized upon sale or disposition of the property as defined in 26
29 U.S.C. 7701(h)(1); this definition shall be used for sales and use tax purposes
30 regardless if a transaction is characterized as a lease or rental under generally
31 accepted accounting principles, the Internal Revenue Code, AS 45.29, or other

1 provisions of federal, state, or local law; this definition shall be applied only
 2 prospectively from the date of adoption and may not have a retroactive effect
 3 on existing leases or rentals;

4 (2) "purchase price" applies to the measure subject to use tax and has
 5 the same meaning as sales price;

6 (3) "sales price"

7 (A) applies to the measure subject to sales tax and means the
 8 total amount of consideration, including cash, credit, property, and services, for
 9 which personal property or services are sold, leased, or rented, valued in
 10 money, whether received in money or otherwise, without any deduction for the
 11 following:

12 (i) the seller's cost of the property sold;

13 (ii) the cost of materials used, labor or service cost,
 14 interest, losses, all costs of transportation to the seller, all taxes
 15 imposed on the seller, and any other expense of the seller;

16 (iii) charges by the seller for any services necessary to
 17 complete the sale, rental, or lease, other than delivery and installation
 18 charges;

19 (iv) delivery charges;

20 (v) installation charges;

21 (vi) the value of exempt personal property given to the
 22 purchaser where taxable and exempt personal property have been
 23 bundled together and sold, leased, or rented by the seller as a single
 24 product or piece of merchandise; and

25 (vii) credit for any trade-in;

26 (B) does not include

27 (i) discounts, including cash, term, or coupons that are
 28 not reimbursed by a third party that are allowed by a seller and taken by
 29 a purchaser on a sale;

30 (ii) interest, financing, and carrying charges from credit
 31 extended on the sale of personal property or services if the amount is

1 separately stated on the invoice, bill of sale, or similar document given
2 to the purchaser; and

3 (iii) taxes legally imposed directly on a consumer that
4 are separately stated on the invoice, bill of sale, or similar document
5 given to the purchaser;

6 (4) "seller" means a person making sales, leases, or rentals of tangible
7 personal property or services;

8 (5) "tangible personal property" means personal property that can be
9 seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to
10 the senses; "tangible personal property" includes electricity, water, gas, steam, and
11 prewritten computer software.

12 * **Sec. 14.** AS 43.56.030 is amended to read:

13 **Sec. 43.56.030. In place of other taxes.** Except for those taxes imposed
14 under AS 43.55, the taxes levied or authorized under AS 43.56.010(b) are in place of

15 (1) all other ad valorem taxes or other taxes imposed by a municipality
16 on property subject to tax under this chapter or exempted from taxation by
17 AS 43.56.020; and

18 (2) all other taxes imposed by a municipality on or with respect to the
19 property subject to tax under this chapter or exempted from taxation by AS 43.56.020,
20 including, but not limited to,

21 (A) taxes on the retail sale or use of the property except for the
22 retail sales tax **levied under AS 29.45.650 or 29.45.700** on the first \$1,000 of
23 each sale;

24 (B) taxes on the sale or use of gas or unrefined oil;

25 (C) taxes on the sale or use of services used in or associated
26 with the property or in its maintenance or operation except for the sales tax
27 **levied under AS 29.45.650 or 29.45.700** on the first \$1,000 of each sale;

28 (D) taxes on or measured by gross or net income from the
29 property, including income from the exploration for, production of, or pipeline
30 transportation of gas or unrefined oil or property; and

31 (E) any license, excise, fee, charge or other tax on or pertaining

1 to the property or services.

2 * **Sec. 15.** Section 4, ch. 100, SLA 2002, as amended by sec. 9, ch. 117, SLA 2003, is
3 repealed and reenacted to read:

4 Sec. 4. AS 29.45.650(a) is amended to read:

5 (a) A [EXCEPT AS PROVIDED IN AS 29.45.750, A] borough may levy a
6 sales and use tax. If a borough levies a sales and use tax, it must conform exactly to
7 the statewide sales and use tax levied and collected under AS 43.44, except that the
8 municipal sales and use tax may be levied at any rate.

9 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 TRANSITION: REGULATIONS. The Department of Revenue may proceed to adopt
12 regulations necessary to implement the provisions of this Act. The regulations take effect
13 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
14 provision being implemented.

15 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 TRANSITION PROVISIONS. (a) A municipal sales and use tax rate ratified before
18 the effective date of the amendments to AS 29.45.650 and 29.45.700 made in this Act remains
19 in effect despite the amendments to AS 29.45 made by this Act. To the extent the provisions
20 of a municipal ordinance are inconsistent with the provisions of this Act, the provisions of the
21 municipal ordinance are superseded by this Act.

22 (b) A specific sales and use tax levied by a municipality that was in effect before the
23 effective date of the statewide sales and use tax levied in this Act and that applies only to one
24 group of products or services, including bed taxes and alcohol taxes, may continue in effect,
25 notwithstanding the provisions of this Act, subject to the provisions of AS 29.45 as they
26 existed immediately before the effective date of this Act.

27 * **Sec. 18.** Section 16 of this Act takes effect immediately under AS 01.10.070(c).

28 * **Sec. 19.** Except as provided in sec. 18 of this Act, this Act takes effect July 1, 2005.