

SENATE BILL NO. 367

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

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/19/04

Referred: Transportation, Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the levy, collection, and administration of sales and use taxes on**
2 **tourism services; and providing for an effective date."**

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

4 *** Section 1.** AS 43 is amended by adding a new chapter to read:

5 **Chapter 51. Tourism Services Sales and Use Taxes.**

6 **Sec. 43.51.010. Levy of tourism services sales and use taxes.** (a) There is
7 levied a sales tax on the sale in this state of tourism services, except to the extent
8 precluded by federal law.

9 (b) There is levied a use tax on the use of a tourism service in this state, except
10 to the extent precluded by federal law.

11 (c) Notwithstanding any contrary provision of this chapter, the use tax under
12 (b) of this section does not apply to a tourism service that has already been subjected
13 to the sales tax under (a) of this section.

14 **Sec. 43.51.020. Rate of tourism services sales and use taxes.** The sales and

1 use taxes imposed by this chapter are levied at a rate of five percent of the sales price
 2 for the tourism service. The tax shall be stated as a separate item on the invoice or
 3 other receipt issued by the seller or commercial provider.

4 **Sec. 43.51.030. Registration for seller or commercial provider of tourism**
 5 **services.** A seller or commercial provider of tourism services in this state shall apply
 6 for and obtain a registration from the department. The department shall prescribe by
 7 regulation the application process, the form of the registration, duration of the
 8 registration, and other requirements to secure and maintain registration under this
 9 chapter. The registration under this chapter may be demonstrated either by a
 10 certificate of registration issued by the department or by an endorsement for the
 11 business license issued under AS 43.70. Regulations adopted under this section shall
 12 require that the applicant affirm that the applicant will file returns, collect the taxes,
 13 and pay the taxes to the department as required by this chapter.

14 **Sec. 43.51.040. Apportionment.** (a) If a tourism service takes place both
 15 inside and outside the state, the taxes levied under AS 43.51.010 are apportioned on
 16 the total sales price for the tourism service multiplied by the ratio of the number of
 17 Alaska days to the total number of days the tourism service takes place in all states
 18 and foreign countries.

19 (b) For a tourism service that includes travel aboard a cruise ship, the goods
 20 and services provided aboard the cruise ship shall be apportioned under (a) of this
 21 section separately from the goods and services not provided aboard the cruise ship.

22 (c) The department, by regulation, may establish the method, including the use
 23 of a regularly published schedule, by which the number of days is determined for
 24 purposes of this section.

25 (d) In this section, "Alaska days" means days on which the tourism service
 26 takes place more of the time in Alaska than in any other state or country.

27 **Sec. 43.51.050. Liability for payment of tourism services sales and use**
 28 **taxes.** (a) A seller of tourism services engaged in business in this state shall collect
 29 the sales tax imposed by this chapter at the time of the sale.

30 (b) A commercial provider engaged in business in this state shall collect the
 31 use tax imposed by this chapter before or in conjunction with the provision of a

1 tourism service.

2 (c) The sales and use taxes imposed by this chapter shall be collected in trust
3 and paid to the department

4 (1) by the seller or commercial provider on the last day of the calendar
5 month immediately following the calendar month in which the taxes are required to be
6 collected or on another less frequent schedule established by the department by
7 regulation; and

8 (2) in the manner required by the department by regulation.

9 (d) A return of the seller or commercial provider, made under penalty of
10 perjury, is due with the taxes imposed by this chapter.

11 (e) The seller or commercial provider is liable to the state for the taxes
12 imposed by this chapter if the taxes are not collected and remitted as required by this
13 chapter. The department may assess the taxes, interest, and penalties imposed by or
14 under this chapter in the manner provided in AS 43.05.

15 (f) The department may by regulation provide for an incentive to a seller or
16 commercial provider for electronically filing returns and making payments, or other
17 use of technology or filing methodologies to improve the efficiency of tax
18 administration. Regulations adopted under this subsection must

19 (1) establish the duration, levels, nature, and value of the incentive; the
20 value of incentive established under this subsection may not exceed \$300 per return,
21 application, filing, or payment; and

22 (2) require that the incentive be available only if the return,
23 application, filing, or payment is filed timely with the department in accordance with
24 this chapter.

25 **Sec. 43.51.060. Administration of tourism services sales and use taxes.** (a)
26 The department shall administer the taxes imposed by this chapter and may adopt
27 regulations to carry out the purposes of this chapter.

28 (b) The proceeds of the taxes collected under this chapter shall be
29 deposited in the general fund.

30 **Sec. 43.51.990. Definitions.** In this chapter,

31 (1) "commercial provider"

1 (A) means a person engaged in the business of providing the
2 tourism service;

3 (B) does not include a person exempt from federal income tax
4 under 26 U.S.C. 501(c)(3), if the business is not an unrelated trade or business
5 that meets the standards of 26 U.S.C. 513;

6 (2) "cruise ship" means a marine vessel that is used in the common
7 carriage of passengers in foreign or interstate commerce in the marine waters of the
8 state; "cruise ship" does not include a noncommercial vessel operated by a state or
9 municipality, the United States, or a foreign government, including vessels operated
10 by the Alaska marine highway system;

11 (3) "department" means the Department of Revenue;

12 (4) "guided activity" means

13 (A) scenic and sightseeing transportation on land, air and
14 water, the predominant purpose of which is to provide recreational,
15 entertainment, and leisure-time opportunities during the course of the
16 transportation; in this subparagraph, "scenic and sightseeing transportation"

17 (i) includes transportation on cruise ships, buses,
18 trolleys, taxis, the Alaska Railroad or other trains, snowmobiles,
19 animals, carriages, aircraft, helicopters, hovercraft, balloons, aerial
20 tramways, parasails, hang-gliders, gliders, marine vessels, rafts, kayaks,
21 and charter fishing boats;

22 (ii) does not include transportation by common carrier if
23 the predominant purpose is to transport passengers from one destination
24 to another, or is another transportation service not predominately for
25 recreational entertainment and leisure-time opportunities, as designated
26 by the department by regulation;

27 (B) recreational activities that enable users to participate in
28 recreational activities or pursue amusement, hobby, and leisure-time interests
29 accompanied, directed, or led by or on behalf of the commercial provider; in
30 this subparagraph, "recreational activities"

31 (i) includes excursions involving hiking, walking,

1 mountaineering, horseback riding, climbing, sightseeing, camping,
 2 skiing, sledding, dogsledding, snowshoeing, boating, rafting, kayaking,
 3 flying, touring, fishing, or hunting;

4 (ii) does not include other activities designated by the
 5 department by regulation;

6 (5) "person" means an individual, firm, partnership, joint venture,
 7 limited liability company, government or military agency, association, corporation,
 8 estate, trust, receiver, or any other group or combination of those entities or groups
 9 acting as a unit;

10 (6) "sales price" means the total consideration for the tourism service;
 11 "sales price"

12 (A) includes any fee, commission, or other consideration
 13 derived by the seller of the tourism service;

14 (B) does not include refunds or other sales and excise taxes on
 15 the tourism service;

16 (7) "seller"

17 (A) means a person engaged in the business of selling a tourism
 18 service;

19 (B) does not include a person exempt from federal income tax
 20 under 26 U.S.C. 501(c)(3), if the business is not an unrelated trade or business
 21 that meets the standards of 26 U.S.C. 513;

22 (8) "tourism service" means a guided activity or a transient
 23 accommodation; "tourism service"

24 (A) includes all services and goods that are bundled with the
 25 guided activity or transient accommodation and sold as a unit to the user or
 26 purchaser;

27 (B) does not include additional services and goods that the user
 28 or purchaser may elect to purchase in addition to the guided activity or
 29 transient accommodation;

30 (9) "transient accommodation" means a dwelling unit that is designed
 31 and used for temporary overnight human occupancy and includes a cruise ship

1 stateroom, Alaska marine highway system stateroom, spaces designed for parking
2 recreational vehicles during occupancy of those vehicles, and a dwelling unit within a
3 motel, hotel, hostel, bed and breakfast, inn, or lodge; "transient accommodation" does
4 not include room and board provided by (A) an employer to an employee in one
5 location as a regular incidence of employment; or (B) a person that is not a
6 commercial provider;

7 (10) "user" means the individual who consumes the tourism service.

8 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **APPLICABILITY.** (a) For a tourism service sold on or after the effective date of this
11 Act and before January 1, 2005, the taxes imposed by this Act apply only to the portion of the
12 tourism service that is for use on or after January 1, 2005.

13 (b) Except as provided in (a) of this section, the taxes imposed by this Act apply to
14 tourism services sold on or after January 1, 2005.

15 (c) In this section, "tourism service" has the meaning given in AS 43.51.990, enacted
16 by sec. 1 of this Act.

17 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).