

Presented by: The Manager
Introduced: 07/23/2018
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-38(b)(am)

An Ordinance Amending the Sales Tax Code Relating to Transportation Network Companies.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Section. CBJ 69.05.010 Definitions, is amended by the addition of the following definition to be incorporated in alphabetical order:

Digital network has the same meaning as in AS 28.23.180: any online-enabled application, software, website, or system offered or used by a transportation network company that enables the prearrangement of rides with transportation network company drivers.

Transportation network company has the same meaning as in AS 28.23.180: a corporation, partnership, sole proprietorship, or other entity that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides; a transportation network company may not be considered to control, direct, or manage the personal vehicles or transportation network company drivers that connect to the transportation network company's digital network, except where agreed to by written contract.

Transportation network company driver has the same meaning as in AS 28.23.180: an individual who:

(A) receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and

(B) uses a personal vehicle to offer or provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

Section 3. Amendment of Section. CBJ 69.05.030 Collection, is amended to read:

69.05.030 Collection.

(a) Unless authorized by the manager under subsection (b) of this section to include the tax in the selling price, sellers, and transportation network companies on behalf of transportation network company drivers, shall add the tax levied in this chapter to the selling price, rent, or service charge in accordance with a schedule promulgated by the manager, on file in the sales tax office.

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Section 4. Amendment of Section. CBJ 69.05.060 Seller to add tax to selling price, is amended to read:

69.05.060 Seller to add tax to selling price.

Every seller and transportation network company collecting and remitting sales tax on behalf of transportation network company drivers shall add the amount of the tax levied by this chapter to the total selling price, and the tax shall be stated separately on any sales receipts or slips, rent receipts, charge tickets, invoices, statements of account or other tangible evidence of sale unless the sales tax is permitted to be included in the selling price under subsection 69.05.030(b).

Section 5. Amendment of Section. CBJ 69.05.062 Monthly remittance of estimated sales tax, is amended to read:

69.05.062 Monthly remittance of estimated sales tax.

(a) *Monthly deposit report.* Every person making sales, rentals, or performing services within the City and Borough, including transportation network companies on behalf of transportation network company drivers, who incurs sales tax liability or a combined sales tax and hotel-motel tax liability, as levied under chapter 69.05 or chapter 69.07, of \$1,000.00 or more in the month shall, on or before the 15th day of the month following the month in which the tax liability was incurred, complete a monthly deposit report declaring estimated sales tax liability and, if applicable, hotel-motel tax liability, for the month and transmit the report to the City and Borough. If the 15th day is a Saturday, Sunday, or federal, state or City and Borough holiday, the due date will be extended until the next business day. The United States Postal Service postmark shall determine the date of filing for mailed reports.

(b) *Amount of monthly remittance.* At the time of transmitting the monthly deposit report, the seller or transportation network company on behalf of a transportation network company driver shall remit to the City and Borough the total estimated amount of sales tax and, if applicable, hotel-motel tax, due for the month for which the deposit report is filed.

(c) *Penalties.* A late filing penalty of \$25.00 shall be added to all late-filed monthly deposit reports. In addition, late payment penalties will be assessed on monthly tax deposits when the seller or the transportation network company responsible for collecting and remitting sales tax on behalf of a transportation network company driver fails to remit at least 80 percent of the total monthly sales tax and hotel-motel tax deposit due on or before the 15th day of the month following the month for which the deposit is required. The late payment penalty will be equal to one percent per month or fraction thereof of the total delinquent monthly deposit balance due. The delinquent amount shall be the difference between the total tax deposit due for the month and the amount of the deposit remitted by the seller or transportation network company on behalf of a transportation network company driver. The delinquent monthly payment penalty will be assessed on the 16th day of each month or fraction of a month from the date of delinquency to the date of total payment or the due date of the sales tax return covering the monthly payment period, whichever is earlier.

(d) *Filing period adjustments.* In addition to the monthly deposit and reporting requirements set forth in subsections (a) and (b) of this section, sellers or transportation network companies on behalf of a transportation network company driver are required to file period returns and remit the remaining unpaid sales tax due as required in subsection 69.05.070(a) or subsection 69.05.100(c). If the sales tax due and payable by the seller or transportation network company on behalf of a transportation network company driver, as required in section 69.05.070, is less than the total amount of the monthly sales tax deposits remitted to the City and Borough during that filing period, the excess balance will be applied to the seller's next monthly sales tax deposit, unless the seller elects in writing to have the balance refunded.

Section 6. Amendment of Section. CBJ 69.05.070 Periodic returns, penalties and interest for delinquency, is amended to read:

69.05.070 Periodic returns, penalties, and interest for delinquency.

(a) Every person making sales, rentals, or performing services within the City and Borough, and transportation network companies on behalf of transportation network company drivers, shall on or before the last day of the month, unless the last day of the month is a Saturday, Sunday, or federal, state or City and Borough holiday in which case the due date will be extended until the next business day, immediately following the end of each filing period complete a return for the required filing period setting forth the total amount of all sales, rentals and services, regardless of whether such transactions are taxable or nontaxable, the amount of sales tax due, and such other information as the City and Borough may require, and sign and deliver or mail the return to the City and Borough manager. Periodic returns shall be filed for the calendar quarters ending on March 31, June 30, September 30, and December 31, unless the seller or transportation network company on behalf of a transportation network company driver is allowed or directed by the City and Borough manager to file for a different time period as authorized in this section and section 69.05.100. A seller, other than a governmental agency, making only exempt sales may be allowed, upon written request to the

City and Borough treasurer or the manager, to file returns for periods which vary from the standard calendar quarter and which cover time periods up to one year.

(b) The tax levied under this chapter, whether or not collected from the buyer, except for credit transactions covered in subsection (c) of this section, must be remitted by the seller or transportation network company on behalf of a transportation network company driver to the City and Borough at the time of transmitting the return, and if not so remitted or if the return is not timely filed, such tax is delinquent. A late filing penalty of \$25.00 shall be added to all late returns. The postmark shall determine the date of filing mailed returns. In addition, a late payment penalty of five percent per month or any fraction thereof, until a total late payment penalty of 25 percent has accrued shall be added to all returns until such tax, penalty and interest thereon have been paid. Such penalty shall be assessed and collected in the same manner as the tax is assessed and collected. In addition to these penalties, interest on the delinquent tax from the due date until paid shall accrue and be collected in the same manner the delinquent tax is collected. The annual interest rate on delinquent tax shall be five percent per year above the Wall Street Journal Prime Rate, or similar published rate, on January 2nd each year, rounded to the nearest full percentage point, as determined by the Finance Director; provided, however, that if such calculated rate would fall below ten percent per year, the interest rate shall be ten percent per year, and if the calculated rate would exceed 15 percent per year, the interest rate shall be 15 percent per year.

(c) The seller or transportation network company on behalf of a transportation network company driver shall report and remit sales tax to the City and Borough on the same basis, cash or accrual, the seller or transportation network company uses for reporting federal income tax. A seller reporting on the accrual basis shall be allowed a tax credit for sales tax previously paid by the seller on any sale, service or rental made on credit to the extent the seller declares such debt to be uncollectible and a bad debt for federal income tax purposes. Such bad debt credit must be claimed on a timely filed quarterly sales tax report within two years from the date of sale in which the bad debt arose.

(d) Except as otherwise provided herein, all returns, reports, and information required to be filed with the City and Borough under this chapter, and all information deductible from such filed returns, reports, and information, shall be kept confidential and are not subject to public inspection. Except upon court order, such returns, reports, and information shall be made available only to employees of the City and Borough whose job responsibilities are directly related to such returns, reports, and information; to the person supplying such returns, reports, and information; and to persons authorized in writing by the person supplying such returns, reports, and information. The following information shall be made available to the public: the name and address of sellers and transportation network companies collecting and remitting sales tax on behalf of transportation network company drivers; whether or not a business, including a transportation network company, or transportation network company driver is registered to collect sales tax in the City and Borough; whether or not a business transportation network company or transportation network company driver is current in filing sales tax returns and in remitting sales tax, the amount of sales tax due, and the number of returns not

filed; and the names and exemption number of nonprofit agencies which have received a nonprofit exemption number from the manager. The manager may, from time to time, publish the names of sellers and transportation network companies collecting and remitting sales tax on behalf of transportation network company drivers delinquent in remitting sales taxes and the amount thereof including the "doing business as" name under which the seller or transportation network company is doing business when the sales tax delinquency being published arises from that business; provided that the names of sellers or transportation network companies who have signed a confession of judgment for the delinquent sales taxes, penalties, and interest, and a stipulation to postpone execution on the judgment, and who are current in their sales tax payments under such stipulation as of the date on which the names are submitted to the publisher, will not be published. Information may also be made available to the public in the form of statistical reports if the identity of particular sellers or transportation network companies is not revealed by the reports.

(e) The City and Borough may permit the proper officer of the United States, of a state, or other municipality to inspect tax returns or reports filed under this title, or may furnish to the officer a copy of the tax return, if the other jurisdiction grants substantially similar privileges to the City and Borough, and if the City and Borough determines that other jurisdiction provides adequate safeguards for the confidentiality of the returns and reports, and that the returns and reports will be used for tax purposes only.

Section 7. Amendment of Section. CBJ 69.05.080 Sellers' compensatory collection discount, is amended to read:

69.05.080 Sellers' compensatory collection discount.

All sellers and persons rendering sales tax returns to the City and Borough, including transportation network companies collecting and remitting tax on behalf of transportation network drivers, shall be allowed to compensate themselves for costs incurred in the collection, recordkeeping, remittance, and accounting for the tax imposed by taking the greater of \$10.00 or one percent of the tax due as a tax collection discount to reduce the tax to be remitted on any period return that is timely filed with a remittance of all sales tax due, provided, however, that the tax collection discount may reduce the tax to zero but shall not result in a credit. The deduction may not exceed \$50.00 for any monthly filing period or \$100.00 for any calendar quarter or longer filing period, and may not be taken if any sales tax, penalty, or interest is due for any previous filing period.

Section 8. Amendment of Section. CBJ 69.05.090 Assessment limitation periods; recordkeeping, is amended to read:

69.05.090 Assessment limitation periods; recordkeeping.

(a) A seller's tax liability, or the liability of a transportation network company collecting and remitting sales tax for a transportation network company driver, under this chapter may be determined and assessed for a period of three years after the date the return was filed with the

City and Borough manager. No civil action for the collection of such tax may be commenced after the expiration of the three-year period except an action for taxes, penalties and interest due for those filing periods that are the subject of a written demand or assessment made under section 69.05.100 within the three-year period, unless the seller or transportation network company waives the protection of this section.

(b) In order to facilitate the administration and enforcement of the provisions of this chapter, each seller or person otherwise engaged in business within the City and Borough, including transportation network companies collecting and remitting sales tax on behalf of transportation network company drivers, shall maintain and keep for a period of three years after the date of filing all of the period sales tax reports, forms, and supporting records and other records prescribed by the manager. The failure to maintain adequate records to allow documentation of the taxability of each transaction will result in the loss of any tax exemption, deduction, or credit for that particular transaction. Upon the request of the City and Borough manager, a seller or transportation network company collecting and remitting sales tax on behalf of transportation network company drivers shall make available for examination in the City and Borough the books, records and other documents of the seller or transportation network company unless the manager authorizes the examination to be conducted at a different location.

Section 9. Amendment of Section. CBJ 69.05.100 Delinquency; failure to submit return or to remit taxes; assessments, is amended to read:

69.05.100 Delinquency; failure to submit return or to remit taxes; assessments.

(a) Whenever the manager reasonably believes a return contains inaccurate reporting or whenever any seller or transportation network company has become delinquent in the submission of the required filing period return or in remitting sales taxes, the City and Borough manager shall mail to the delinquent seller's or transportation network company's last known address a written demand by certified mail, return receipt requested, for submission of the corrected or required sales tax return and remittance within ten days. In the event of noncompliance with such demand, the City and Borough manager may make a sales tax assessment against the delinquent seller or transportation network company, the assessment to be based on an estimate of the gross taxable revenue received by the seller or the transportation network company on behalf of the transportation network company driver during the filing period in question. A copy of the assessment shall be sent to the seller or transportation network company at the seller's or transportation network company's last known address by certified mail, return receipt requested. The seller or transportation network company shall have a right to a hearing before the manager at which time the seller or transportation network company shall make available for examination the books, papers, records, and other documents pertaining to the sales and revenue for the period involved in the assessment. The seller or transportation network company may exercise the right to a hearing by delivering to the manager, within 15 days of the date the notice was mailed, a written request for a hearing. The manager shall establish a date and time for a hearing to be held within ten days of receipt of the request unless a later time is mutually agreeable. The hearing officer conducting the hearing shall issue an amended assessment upon a determination that an amendment should be made. The amended assessment, or the original assessment if no

amendment is made within five days of the hearing, shall be the final assessment for the purpose of determining the seller's liability to the City and Borough. If no timely request for a hearing is made, the original assessment shall be the final assessment 30 days after the mailing of the notice of the original assessment unless the seller or transportation network company has submitted an accurate return within the 30 days.

(b) The City and Borough may file a civil action for collection of any taxes, penalty, or interest due before or after making a demand or assessment under subsection (a) of this section.

(c) Whenever any seller or transportation network company fails to submit the required filing period return or remit taxes after notice given as provided in subsection (a) of this section, the City and Borough manager may require such seller or transportation network company to submit returns and remit taxes on a monthly or more frequent basis.

Section 10. Amendment of Section. CBJ 69.05.104 Protest of tax; is amended to read:

69.05.104 Protest of tax.

(a) A buyer who protests the payment of the tax levied under this chapter shall pay the tax and shall provide the seller, any transportation network company collecting the sales tax on behalf of a transportation network company driver, and the sales tax administrator with a written statement of protest within five working days of the sale that identifies the sale, rental, or service that is the subject of the tax protested, the amount of tax paid, the buyer's and seller's name, mailing address, telephone number, and the basis for the protest.

(b) If the seller or a transportation network company that has collected or remitted sales tax on behalf of a transportation network company driver protests liability for sales tax, penalties, or interest, the seller or transportation network company shall pay the tax, penalties, and interest under a written protest filed before or with the payment and setting forth the basis for the protest. No appeal from the sales tax board of appeals nor any action for a refund may be filed or maintained nor may a defense to nonpayment be maintained in a civil action unless the amount in dispute has been paid under protest as provided in this subsection. A protest accompanying a payment shall be deemed waived unless the protestor files an appeal under this chapter pursuant to and within 90 days of the protest.

(c) An appeal from the sales tax board of appeals or an action for a refund may be filed, maintained, or both without the payment under protest otherwise required by subsection (b) of this section:

(1) Upon a finding by the director of finance that:

(A) The seller or the transportation network company on behalf of the transportation network company driver has registered for the sales tax and filed returns according to the schedule specified in this chapter;

- (B) The contested liability arises from an audit finding;
- (C) The contested liability is not of a kind regularly remitted by similarly situated sellers; and

(2) Subject to the requirement that if the appeal or action for refund is denied, interest, but not penalty, shall be charged notwithstanding relief under this subsection.

Section 11. Amendment of Section. CBJ 69.05.130 Sale of business; final tax return; liability of purchaser. is amended to read:

69.05.130 Sale of business; final tax return; liability of purchaser.

(a) If any seller or transportation network company collecting and remitting sales tax on behalf of transportation network company drivers sells, assigns, transfers, conveys, leases, forfeits, or abandons the business to another person, the seller or transportation network company shall make a final sales tax return within 15 days after the date of selling, assigning, transferring, conveying, leasing, forfeiting, or abandoning the business showing that all tax obligations imposed by this chapter have been paid. The purchaser, successor, transferee, lessee, assignee, creditor, or secured party shall withhold a sufficient portion of the purchase money to pay the amount of such sales taxes, penalties, and interest as may be due and unpaid to the City and Borough. If the purchaser, assignee, transferee, lessee, successor, creditor, or secured party fails to withhold from the purchase money, or fails to otherwise provide for or make the payment of the taxes, interest, and penalties owed by the business as provided in this chapter, the purchaser, assignee, transferee, lessee, successor, creditor, or secured party shall be personally liable for the payment of the taxes, penalties and interest accruing and unpaid to the City and Borough on account of the operation of the business of any former owner, owners, operators, or assigns.

(b) Before the sale, lease, assignment, transfer, or other disposition of the business is completed, the seller or transportation network company shall file with the City and Borough manager an informational notice identifying the name and address of each person or entity involved in the transaction, the nature of the transaction, and the effective date of the transaction.

Section 12. Amendment of Section. CBJ 69.05.140 Lien for tax, interest and penalty, is amended to read:

69.05.140 Lien for tax, interest and penalty.

(a) The tax, interest and penalty imposed under this chapter in addition to the lien filing fee under subsection (b) of this section shall constitute a lien in favor of the City and Borough upon the assets, including all real and personal property, of every person making taxable sales or of a transportation network company responsible for collecting and remitting sales tax on behalf of transportation network company drivers within the City and Borough. The lien arises upon

delinquency and continues until liability for the amount is satisfied or the property of the delinquent person is sold at foreclosure sales. The lien is not valid as against a prior mortgagee, pledgee, purchaser, or judgment creditor until notice of the lien is filed in the office of the recorder for the City and Borough recording district in the manner provided for federal tax liens in AS 40.19.

(b) Fees for the filing and releasing of liens shall be as follows:

- (1) Filing of liens, \$25.00 plus the recorder's office filing fee;
- (2) Release of liens, \$25.00 plus the recorder's office filing fee.

The rates in this subsection may be changed by the manager from time to time to reflect the costs of providing municipal services generally.

Section 13. Amendment of Section. CBJ 69.05.145 Collected taxes, is amended to read:

69.05.145 Collected taxes.

Taxes collected under this chapter by a seller or transportation network company on behalf of transportation network company drivers shall belong to the City and Borough and shall be held by the seller or transportation network company in trust for the City and Borough until paid over as provided in this chapter.

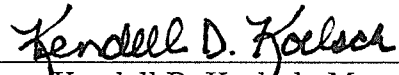
Section 14. Amendment of Section. CBJ 69.05.170 Registration, is amended to read:

69.05.170 Registration.

A person, firm, copartnership, corporation, or other business entity, including a transportation network company driver, shall register with the manager before making retail sales, rendering services, or making rentals within the City and Borough. A transportation network company that collects and remits sales tax on behalf of a transportation network company driver shall notify such transportation network company driver of the registration requirement under this section. Nothing in this section shall be construed to require a transportation network company to register with the manager.

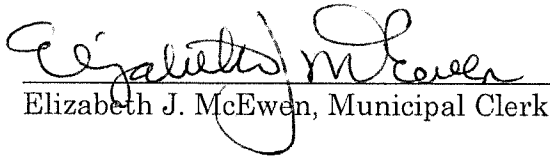
Section 15. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 17th day of September, 2018.



Kendell D. Koelsch, Mayor

Attest:



Elizabeth J. McEwen, Municipal Clerk