

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 3.35 2 PERCENT AREAWIDE SALES TAX FOR PROPERTY TAX RELIEF, TO ADOPT A 2 PERCENT SALES TAX WITHIN THE ENTIRE MATANUSKA-SUSITNA BOROUGH; AND, AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AUTHORIZING THE BOROUGH TO ENACT MSB 1.10.170, 2 PERCENT AREAWIDE SALES TAX FOR PROPERTY TAX RELIEF, TO GRANT THE BOROUGH THE POWER TO ENACT A TAX NOT TO EXCEED 2 PERCENT ON SALES, SERVICES, AND RENTALS WITHIN THE ENTIRE MATANUSKA-SUSITNA BOROUGH AND SUBMITTING THE QUESTION TO THE QUALIFIED AREAWIDE VOTERS AT THE NOVEMBER 5, 2019 REGULAR BOROUGH ELECTION.

AGENDA OF: June 18, 2019

ASSEMBLY ACTION:
removed from agenda at approval of agenda. No action taken. 8-20-19 *(BGM)*

MANAGER RECOMMENDATION: Introduce and ~~set~~ for public hearing.

APPROVED BY JOHN MOOSEY, BOROUGH MANAGER: _____

Route To:	Department/Individual	Initials	Remarks
	Originator	NS	for Assemblymember Sykes
	Finance Director	<i>af</i>	
	Borough Attorney	<i>NS</i>	
	Borough Clerk	<i>JRM</i>	<i>6/11/19</i> <i>(BGM)</i>

ATTACHMENT (S) : Fiscal Note: YES X NO _____
 Ordinance Serial No. 19-092 (46 pp)
 Ordinance Serial No. 19-093 (3 pp)

SUMMARY STATEMENT: These ordinances are being brought forward at the request of Assemblymember Sykes to levy a 2% areawide sales tax within the entire Matanuska-Susitna Borough for property tax relief. The sales tax will only take effect if approved by areawide voters at the November 5, 2019 regular Borough election. The entire amount of sales tax collected will be used to reduce areawide property taxes, subject to annual appropriation by the borough assembly.

State law allows the Matanuska-Susitna Borough to institute a sales tax, but requires that it be approved by the voters before it can take effect.

With the current uncertainty regarding the fiscal condition of the State of Alaska, it is prudent to diversify the sources of tax revenue to the Matanuska-Susitna Borough so that real property taxpayers do not continue to shoulder the tax burden.

This sales tax revenue will be used to offset areawide real property taxes, not to raise overall Borough revenues. As per MSB 3.35.015, the use of the tax is to grant property tax relief through the annual appropriations process of the Borough Assembly in preparing the annual budget. By this mechanism, the Borough will not be adding to the total amount of taxes it collects, rather, the Borough will be diversifying the revenue it collects from Borough residents, non-resident visitors, and non-resident sellers to then lower property taxes.

The sales tax largely mirrors the sales tax currently levied within the City of Wasilla and the Talkeetna Sewer & Water Service Area. This means that the administration of the tax will not be something new, unusual, or unique.

Of note, MSB 3.35.040 will require taxation of all sales and rentals delivered into the Matanuska-Susitna Borough if the seller is not located in the Borough but provides goods or services over \$100,000 annually or conducts more than 200 transactions annually in the Borough. In 2018, the United States Supreme Court ruled that a business does not have to be physically located in a State to satisfy the demands of due process, which requires that there be some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax. See South Dakota v. Wayfair, Inc., 138 S.Ct. 2080 (U.S. 2018). The Matanuska-Susitna Borough is aware of the holding and the policy reasons for the State of South Dakota enacting the tax at issue in Wayfair and is adopting this proposed sales tax for the same reasons. The requirement that taxes on interstate commerce must apply to an activity with a substantial nexus with the taxing authority is established when the taxpayer or collector avails itself of the substantial privilege of carrying on business in that jurisdiction. The Borough's sales tax ordinance as it applies to non-resident sellers is generally copied from the South Dakota law.

Ordinance Serial No. 19-093 (the Areawide Sales Tax Ordinance) will become effective January 1, 2020 only if the ballot proposition contained in Ordinance Serial No. 19-093 (the Areawide Sales Tax Ballot Proposition) is approved by a majority of the qualified areawide voters voting on the proposition at the regular Borough election on November 5, 2019.

RECOMMENDATION OF ADMINISTRATION: Adoption of Legislation

**MATANUSKA-SUSITNA BOROUGH
FISCAL NOTE**

Agenda Date: June 18, 2019

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 3.35 2 PERCENT AREAWIDE SALES TAX FOR PROPERTY TAX RELIEF, TO ADOPT A 2 PERCENT SALES TAX WITHIN THE ENTIRE MATANUSKA-SUSITNA BOROUGH.

ORIGINATOR: NS for Assemblymember Sykes

FISCAL ACTION (TO BE COMPLETED BY FINANCE)	FISCAL IMPACT <input checked="" type="radio"/> YES <input type="radio"/> NO
AMOUNT REQUESTED *	FUNDING SOURCE <i>Sales Tax</i>
FROM ACCOUNT # <i>100.000.000.2XX.XXX</i>	PROJECT #
TO ACCOUNT :	PROJECT #
VERIFIED BY: <i>Barbara Baumgard</i>	CERTIFIED BY:
DATE: <i>6/10/19</i>	DATE:

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023
Personnel Services						
Travel						
Contractual						
Supplies						
Equipment						
Land/Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL						
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REVENUE			*			
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FUNDING:

(Thousands of Dollars)

General Fund			*			
State/Federal Funds						
Other						
TOTAL			*			

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary) * Amount is dependant on sales and taxes collected

PREPARED BY: _____ PHONE: _____
 DEPARTMENT: *Chargen* DATE: _____
 APPROVED BY: *Chargen* DATE: *6/11/19*

AMENDMENT NUMBER 1

I move to amend Ordinance Serial No. 19-092 and 19-093 to change the effective dates of the code changes and implementation of the sales tax from January 1, 2020 to July 1, 2020.

Under this amendment, the ballot question will still go forward at the Borough regular election on November 5, 2019, but if approved, the tax will start on July 1, 2020 instead of January 1, 2020.

AMENDMENT NUMBER 2

I move to add a non-code section to Ordinance Serial No. 19-092 and 19-093 to read:

Section __. Delegation to the cities. Subject to approval of the cities by ordinance, the Matanuska-Susitna Borough Assembly approves a delegation of the power to assess and collect the city sales taxes to the respective cities of Palmer, Wasilla, and Houston for the sales taxes levied by those entities within their boundaries.

Under this amendment the Assembly will approve the delegation of power to the cities so they may continue to assess and collect the sales taxes in their cities just as they are currently doing.

AMENDMENT NUMBER 3

NOTE: These amendments must be moved together and pass to be effective.

First, I move to amend Ordinance Serial No. 19-033 to add a new paragraph to MSB 1.10.170 to read:

The sales tax is conditioned on the Borough lowering the annual areawide property tax levy in the amount corresponding to the revenue collected from the sales tax.

Second, I move stike the ballot language and replace with:

PROPOSITION NO. _____

**Enact MSB 1.10.170 and MSB 3.35
2 Percent Areawide Sales Tax for Property Tax Relief
and
Areawide Property Tax Reduction**

The Matanuska-Susitna Borough is proposing to enact MSB 1.10.170 and MSB 3.35 "2 Percent Areawide Sales Tax for Property Tax Relief" and exercise the power to levy, collect, and enforce an areawide tax not to exceed 2 percent on sales, services, and rentals within the entire Matanuska-Susitna Borough; and,

The sales tax is conditioned on the Borough lowering the annual areawide property tax levy in the amount corresponding to the revenue collected from the sales tax.

Shall the 2 Percent Areawide Sales Tax for Property Tax Relief and the Areawide Property Tax Reduction be approved?

Yes _____ No _____

Third, I move to amend Ordinance Serial No. 19-092, section 3.35.015, to strike the current language and replace with:

All taxes levied and collected under this chapter will be used for property tax relief as specified in MSB 1.10.170.

Assemblymember Sumner Ordinance Nos. 19-092

I move to amend Ordinance Serial No. 19-092 to remove all exemptions not required by the Constitutions and Laws of the United States and the State of Alaska.

To this end, I move to

- amend MSB 3.35.020, Definitions, by striking the definitions for "Shipping and freight hauling services" and "U.S. postage";
- amend MSB 3.35.050, Exemptions, by:
 - striking the following subsections: (A)(1) through (6), (A)(8) through (11), (A)(14) through (21), and strike sections (B) and (C) in their entirety;
 - inserting new subsections (A)(14) and (A)(15); and
 - directing the Clerk to renumber section (A);
- strike section MSB 3.35.080, Certificate of Exemption, in its entirety; and
- amend MSB 3.35.190, Violations, Remedies, by striking subsection (A)(8) that reads: (8) A buyer giving false information when applying for a certificate of exemption, or using a certificate of exemption in a transaction that was not exempt from sales tax under the exemption for which the certificate was issued.

Below shows the exemptions that would be remaining and the addition of (A)(14) and (A)(15).

3.35.050 EXEMPTIONS.

(A) The following transactions are exempt from sales tax:

~~(1) Sales of real property and interests in real property.~~

~~(2) Casual and isolated sales, rentals or services, not made:~~

~~(a) In the ordinary course of business; or~~

~~(b) Pursuant to a business license; or~~

~~(c) By sellers representing themselves to be in the business of making such retail sales, rentals, or services.~~

~~(3) Sales of securities, insurance and bonds of guaranty and fidelity.~~

~~(4) The following fees charged by banks, savings and loan associations, credit unions, and investment banks:~~

~~(a) Fees associated with deposit accounts, including service fees, monthly account fees, non-sufficient funds (NSF) fees, and attachment fees.~~

~~(b) Fees for the purchase of bank checks, money orders, travelers checks, foreign currency, and similar products for payments.~~

~~(c) Fees for, or commissions on, the sale, exchange or transfer of currency, stocks, bonds, and other securities.~~

~~(d) Fees for the use of automatic teller machines and for transactions made through automatic teller machines, notary fees, and overdraft protection fees.~~

~~(e) Loan transaction fees and escrow collection services.~~

~~(f) Safe deposit box rentals or fees.~~

~~(5) Contracts to transport elementary or secondary school students to and from school.~~

~~(6) Sales of food in lunchrooms or cafeterias in elementary, secondary or post-secondary schools that are operated primarily for the convenience of school students and faculty, and not operated for profit.~~

(7) Sales, rentals, or services which the borough is prohibited from taxing by the constitutions or statutes of the United States and the State of Alaska.

~~(8) Sales of subscriptions to newspapers and other periodicals.~~

~~(9) Sales, rentals, and services to the United States, the State of Alaska, and any of their agencies, instrumentalities, or political subdivisions.~~

~~(10) Dues or fees to nonprofit clubs, labor unions, or fraternal organizations.~~

~~(11) Sales of admission to school entertainments, school athletic events, and events conducted for the benefit of charitable or community organizations. Retail sales by a school sanctioned activity group raising funds for its approved purpose. This exemption does not apply to sales of gaming property.~~

(12) Sales related to orbital space facilities, space propulsion systems, space vehicles, satellites or stations, to the extent of the exemption required by AS 29.45.650(h).

(13) All purchases made with (i) food coupons, food stamps, or other type of allotment issued under 7 U.S.C. 2011-2036

(Food Stamp Program); or (2) food instruments, food vouchers, or other type of certificate issued under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants or Children) are exempt. For purposes of this subsection, the value of a food stamp allotment paid in the form of a wage subsidy as authorized under AS 47.25.975(b) is not considered to be an allotment issued under 7 U.S.C. 2011-2036 (Food Stamp Program) to the extent of the exemption required by AS 29.45.650(f).

(14) Sales related to (1) the physical transfer of refined fuel, unless the transfer is made in connection with a sale or use in the borough, or (2) wholesale sales or transfers of fuel refined in the borough to the extent of the exemption required by AS 29.45.650(i). For purposes of this subsection, a sale is in the borough if the fuel is delivered to the buyer in the borough and a use is in the borough if the fuel is consumed in the borough.

(15) Sales related to a construction contract awarded by the state or a state agency, or on a subcontract awarded in connection with the project funded under the construction contract to the extent of the exemption required by AS 29.45.650(k).

~~(14) Residential rentals for a term of 30 or more consecutive days.~~

~~(15) Child and adult daycare services, pre-elementary school, and babysitting services.~~

~~(16) Sales of cemetery plots, caskets, funeral and burial related goods and services by a funeral home.~~

~~(17) Human health care services provided by a health care provider licensed by the State of Alaska under Title 8 of the Alaska Statutes, and sales of property and services pursuant to a prescription or written order from such a person.~~

~~(18) Sales and rentals of hearing aids, crutches, wheelchairs and personal apparatus specifically manufactured for a patient.~~

~~(19) U.S. Postage and shipping and freight hauling services that originate in the Matanuska-Susitna Borough but the end destination is outside the limits of the Matanuska-Susitna Borough.~~

~~(20) Assisted living services provided in accordance with an assisted living plan and in an assisted living home licensed as such by the State of Alaska.~~

~~(21) Sales of goods and services provided under a warranty or service contract, whether performed by the manufacturer or authorized representative of the manufacturer, and charged to a third party warrantor for repairs, major maintenance, or both. The initial purchase of warranty or service contract would be taxed at the time of purchase. Any portion of repair paid by the customer through a deductible or other means would not be exempt under this section.~~

~~(B) The following transactions are exempt from sales tax; provided, that the buyer presents to the seller at the time of the sale transaction a valid certificate of exemption applicable to the transaction, issued to the buyer under MSB 3.35.080:~~

~~(1) Sales to a dealer in the property sold, for the purpose of resale by the dealer.~~

~~(2) Sales of raw material to a manufacturer, which raw material becomes an ingredient or component part of a manufactured product or a container thereof, or is consumed in the manufacturing process.~~

~~(3) Sales of tangible personal property that either will be consumed in the course of construction or become part of real property, and rentals of equipment or services by a licensed contractor under Chapter 8.18 of the Alaska Statutes, to an owner of real property for use in the original construction of, or renovations to, improvements to the real property. This exemption does not apply to sales of tangible personal property, or rentals of equipment, that are to be used in repairing or maintaining real property.~~

~~(4) Sales of tangible personal property that either will be consumed in the course of construction or become part of real property, and rentals of equipment or services by a licensed contractor under Chapter 8.18 of Alaska Statutes, to a person licensed as a contractor under Chapter 8.18 of the Alaska Statutes~~

~~for use in the original construction of, or renovations to, improvements to real property. This exemption does not apply to sales of tangible personal property, or rentals of equipment, that are to be used in repairing or maintaining real property.~~

~~(5) Sales, rentals, and services to a person that the Internal Revenue Service recognizes as an organization described in Section 501(c)(3), 501(c)(4) or 501(c)(19) of the Internal Revenue Code; provided, that the sale, rental or service is not for use in an "unrelated trade or business" of the person, as that term is defined in Section 513 of the Internal Revenue Code.~~

~~(6) Sales, rentals, and services to a church that is organized as a nonprofit corporation under the laws of the State of Alaska.~~

~~(7) Sales of food supplies to food service establishments for incorporation into food products to be sold to the public.~~

~~(8) Sales of food supplies to hospitals, institutions housing six or more residents, and schools.~~

~~(9) Services sold for resale when the services are directly integrated into services or goods sold by the buyer located within the Matanuska-Susitna Borough and registered with the sales tax administrator, to another purchaser in the normal course of business, provided that the services are purchased separately for resale, and the services are identified, charged~~

~~for and billed for separately without markup from any other services.~~

~~(C) The following transactions are exempt from sales tax; provided, that the seller has at the time of the transaction a valid certificate of exemption applicable to the sales transaction, issued to the seller under MSB 3.35.080:~~

~~(1) Sales, rentals, and services by a person that the Internal Revenue Service recognizes as an organization described in Section 501(c)(3), 501(c)(4) or 501(c)(19) of the Internal Revenue Code; provided, that the sale, rental or service is not part of an "unrelated trade or business" of the person, as that term is defined in the Internal Revenue Code.~~