

# Alaska Remote Seller Sales Tax Commission

## Commission Board Work Session

March 18, 2020 \* 1-855-257-8693 \* Passcode 1066723 \* 11:00 a.m. – 12:00 p.m.

- I. AML Update Status Update
  - a. Software
  - b. Staff
  - c. Documents
  - d. Communication
- II. Discussion of Interpretive Guidance 2020.01: Sales Tax Cap for Installment Payments
- III. Discussion of Interpretive Guidance 2020.02: Establishing Economic Nexus for Out of State Sellers
- IV. Discussion of Interpretive Guidance 2020.03: Establishing Registration Requirements for In-state Sellers
- V. Discussion of Interpretive Guidance 2020.04: Freight Forwarding from out of state
- VI. Discussion of procedure for sellers who should have remitted directly to Jurisdiction
- VII. Discussion of proposed update to Intergovernmental Agreement
- VIII. Commission meeting May 8
- IX. General Discussion – Q&A

### Members who have adopted the Code:

- Haines Borough
- City of Homer
- City and Borough of Juneau
- City of Kenai
- Kenai Peninsula Borough
- City of Bethel
- City of Seldovia
- City of Seward
- City of Soldotna
- City of Wasilla
- City and Borough of Wrangell

## Library of Interpretations

2020.01 SALES TAX CAP FOR INSTALLMENT PAYMENTS 3.18.2020

2020.02 ESTABLISHING ECONOMIC NEXUS FOR OUT OF STATE SELLERS 3.18.2020

2020.03 ESTABLISHING REGISTRATION REQUIREMENTS FOR IN-STATE SELLERS 3.18.2020

2020.04 FREIGHT FORWARDING FROM OUT OF STATE 3.18.2020

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## Interpretation 2020.01 SALES TAX CAP FOR INSTALLMENT PAYMENTS 3.18.2020

### Issue:

Does the tax cap apply once to the total price of a service or product, even if the service or product is billed over multiple invoices?

### Recommendation:

The cap is applied to each individual invoice billing.

### Example:

A customer buys a service and is quoted \$15,000. The municipality the customer lives in has a tax rate of 6% and a tax cap of \$3,000 (only the first \$3,000 of the price can be taxed, so the customer pays maximum \$180 in sales tax). The customer and seller agree to 3 separate \$5,000 invoices instead of \$15,000 at once.

The seller will include sales tax up to the cap on each \$5,000 invoice for a total of \$540 in sales tax collected (\$180 x 3 = \$540 tax).

### Rationale:

The Code specifically addresses this question in Section 030 – Imposition – Rate

Section 030.F. states “When a sale is made on an installment basis, **the applicable sales tax shall be collected at each payment, calculated at the sales tax rate in effect, and with the cap applied**, at the time of the original sale or the date the service is rendered, based on the local jurisdiction’s code(s).”

Section 030.G. states “**When a sales transaction involves placement of a single order with multiple deliveries made at different points in time that are separately invoiced, the applicable sales tax shall be collected on each separately invoiced delivery**, calculated at the sales tax rate in effect, and with the cap applied,. At the time of the original sale or the date the service is rendered.”

## Interpretation 2020.02 ESTABLISHING ECONOMIC NEXUS FOR OUT OF STATE SELLERS 3.18.2020

### Issue:

How does the *Wayfair* Supreme Court decision affect municipalities if the Court only discussed and wrote about state-level jurisdiction? Are only remote sales into a jurisdiction considered for threshold determination?

### Recommendation:

The remote seller's gross annual sales will determine whether they have met the threshold.

### Example:

A seller has sales into Alaska through its website or via a marketplace facilitator. The seller will use its gross, statewide sales to determine if they have economic nexus (meet the threshold of either \$100,000 in annual sales or 200 individual transactions).

### Rationale:

The ruling establishes the basis for establishing a statewide threshold test to determine if there is an economic nexus within a state and does not distinguish between local jurisdictions. All sales into the state are used to determine if a seller meets the threshold. Once nexus is established with a state, the inquiry is over and a seller may not refuse to collect sales tax on the basis of lack of nexus.

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## Interpretation 2020.03 ESTABLISHING REGISTRATION REQUIREMENTS FOR IN-STATE SELLERS 3.18.2020

### Issue:

How do in-state sellers determine if they should register and file with the Commission?

### Recommendation:

The Commission will apply the criteria threshold only to remote sales conducted by an in-state seller and occurring into a taxing jurisdiction.

### Example:

An in-state seller that has physical sales in one jurisdiction, but also remote sales into other jurisdictions, will only count its remote sales to determine if they meet the criteria for registration - either \$100,000 in annual, gross remote sales or 200 individual, annual remote transactions.

### Rationale:

This treats in-state sellers the same as inter-state sellers, protects small businesses within Alaska, and separates physical sales (to be filed where that seller has physical presence) from remote sales (wherein the seller will file with the Commission).

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## Interpretation 2020.04 FREIGHT FORWARDING FROM OUT OF STATE 3.18.2020

### Issue:

Many companies do not ship directly to Alaskan residents. To get those products, residents can have the merchandise delivered to a freight-forwarding company in Washington which then forwards the merchandise to the Alaskan community.

The company charges the sales tax rate of the Washington jurisdiction and remits the sales tax to that community instead of assessing tax and remitting to the final destination in Alaska.

### Recommendation:

Residents who use the freight forwarding services should maintain all receipts and request a refund from the state of Washington. The state will refund their portion of the sales tax collected but the Alaskan resident cannot recoup the city sales tax from the Washington jurisdiction.

For the Washington state sales tax refund, there is information here:

<https://dor.wa.gov/taxes-rates/retail-sales-tax/sales-nonresidents>

### Example:

A Gustavus resident orders from Wayfair which does not deliver to Alaska. The resident has the product delivered to Frontier Freight in Kent, Washington. Frontier Freight then ships the product to Gustavus. Wayfair charges sales tax for the city of Kent and the state of Washington and remits accordingly. Gustavus does not receive any of the sales tax for the product sale. Frontier Freight charges sales tax for Gustavus for the freighting and remits that to Gustavus.

### Rationale:

It boils down to the concept of sourcing. Basically, tax is due where the goods are delivered. When a buyer gives the seller a delivery address in Washington, the delivery location is considered to be the "source" for taxation purposes. So any order for goods that is delivered to the freight-forwarding is sourced to that location and taxed accordingly, regardless of where it goes from there.

Washington is entitled to those sales taxes. Alaska jurisdictions would only be due sales tax from remote sellers when remote sellers ship or otherwise arrange for delivery to a location in the Alaska jurisdiction.

# ARSSTC Procedure

## Physical Presence Seller incorrectly filing through Commission

### Challenge

As sellers begin collecting, it may occur that they register incorrectly with the Commission and file for a jurisdiction they have a physical presence in and should separately remit to.

### AMSTP Role:

- The staff has added the following language in the MUNIRevs portal as a reminder to sellers:  
Stop!! If you have a physical presence in a community, you will not file taxes for that community on this portal. You will need to file with that jurisdiction.
- Upon notification from the jurisdiction of a seller incorrectly filing, or upon otherwise recognizing this mistake, staff will remove the seller's ability within MUNIRevs to file or remit. A letter will be sent to the seller notifying them of this occurrence.
- While we hope to act swiftly when this occurs, there will be instances that are just not avoidable. The Commission's fees will apply since the tax filing portal was used to process the return, but the action of the Commission will be to correct this in all future filings.

The Commission and staff will do everything they can to encourage sellers with physical presence to file directly with the jurisdictions. The Commission and staff rely on jurisdiction tax administrators to inform the Commission of incorrect filing methods and together we can work to correct mistakes, when they occur.

**Alaska Intergovernmental  
Remote Seller  
Sales Tax Agreement**

Revised Date:

March 18, 2020

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## **Alaska Intergovernmental Remote Seller Sales Tax Agreement**

This Agreement is made and entered into by the signatories representing Alaska's cities and boroughs to enable them to implement single-level, statewide administration of remote sales tax collection and remittance. The provisions of the Agreement do not apply to administration and collection of sales taxes for the sales of goods and services originating from within the boundaries of a member municipality nor does this Agreement restrict how a member municipality administers and collects sales tax on such sales, nor on sales made by those retailers with a physical presence in the municipality. The authority to set rates and exemptions is maintained by the member municipality.

### **Article I. Background Principles.**

1. The signatories wish to enable local governments to benefit from opportunities for collection of existing sales tax on sales made by remote sellers. Remote sellers are sellers who sell, often through the internet, products or services in a taxing jurisdiction without having a physical presence in the taxing jurisdiction.
2. The collection of remote sales tax provides a level playing field for local businesses and strengthens the ability of local governments to provide public services and infrastructure.
3. The signatories are particularly mindful of the specific holding in, and implications of, the Supreme Court's *South Dakota v. Wayfair* decision, which provides guidance relative to nexus and the legal defensibility of a single-level statewide administration that reduces or removes potential burdens to interstate commerce.
4. Alaska's local governments have the authority to enter into intergovernmental agreements and applicable taxing authority has been delegated to organized boroughs and cities.
5. The signatories desire to establish an intergovernmental entity to enable cooperative centralized administration of sales tax collection, remittance, and enforcement on sales made by remote sellers.

### **Article II. Purpose.**

The purpose of this Agreement is to:

1. Enable cooperative centralized administration of sales tax collection, remittance, and enforcement on sales made by remote sellers using a single statewide intergovernmental entity;
2. Provide for and promote reasonable uniformity and compatibility in significant components of local sales tax levy and collection on sales made by remote sellers and marketplace facilitators in order to facilitate streamlined joint administration; and
3. Facilitate taxpayer and tax collector convenience and compliance in the filing of tax returns, the payment of tax, and in other phases of tax administration of sales made and services provided by remote sellers and marketplace facilitators.

### Article III. Definitions.

As used in this Agreement:

1. “Commission” means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.~~means the Alaska Remote Seller Sales Tax Commission established pursuant to this Agreement.~~
2. “Local Government” means any home rule, first class, or second class borough, or any home rule, first class, or second class city, or unified municipality in Alaska.
3. “Member” means a taxing jurisdiction that is a signatory of the Alaska Remote Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Remote Seller Sales Tax Code.~~means a Local Government signatory to this Agreement.~~
4. “Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order, phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.~~means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity that sells property or products or performs services in the State of Alaska or a taxing municipality in the state, using the internet, mail order, or telephone, without having a physical presence in the state or taxing municipality.~~
5. “Sales tax” means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of property or the rendering of services measured by the price of the property transferred or services provided.

“Marketplace facilitator”

means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller’s property or services through a physical or electronic marketplace operated by the person, and engages:

(a) Directly or indirectly, through one or more affiliated persons in any of the following:

- (i) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;
- (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;
- (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or
- (iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(b) In any of the following activities with respect to the seller's products:

- ~~6.—(i) Payment processing services;~~
- ~~(ii) Fulfillment or storage services;~~
- ~~(iii) Listing products for sale;~~
- ~~(iv) Setting prices;~~
- ~~(v) Branding sales as those of the marketplace facilitator;~~
- ~~(vi) Order taking;~~
- ~~(vii) Advertising or promotion; or~~
- ~~(viii) Providing customer service or accepting or assisting with returns or exchanges, means a person that provides for sellers a platform to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products or services (excluding lodging and rentals) through a physical or electronic marketplace operated by the person, and engages:-~~
- ~~7. Directly or indirectly, through one or more affiliated persons in any of the following:~~
- ~~8. Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;~~
- ~~9. Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;~~
- ~~10. Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or~~
- ~~11. Software development or research and development activities related to any of the activities described in (b) of this subsection (6), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person;~~
- ~~12. In any of the following activities with respect to the seller's products:~~
- ~~13. Payment processing services;~~
- ~~14. Fulfillment or storage services;~~
- ~~15. Listing products for sale;~~
- ~~16. Setting prices;~~
- ~~17. Branding sales as those of the marketplace facilitator;~~
- ~~18. Order taking;~~
- ~~19. Advertising or promotion; or~~
- ~~20. Providing customer service or accepting or assisting with returns or exchanges.~~

#### **Article IV. The Commission.**

##### **1. Organization and Management.**

- a. The Alaska Remote Seller Sales Tax Commission (the “Commission”) is hereby established as an intergovernmental entity in the state of Alaska. It will be comprised of one designated representative from each Member, who shall have the authority to act on the Member’s behalf.
- b. Each Member will be entitled to one vote.
- c. To assist conducting business when the full Commission is not meeting, the Commission will annually elect a Board of Directors of seven members, including officers. The Board of Directors will act subject to the provisions of this Agreement and as provided in the bylaws of the Commission, as ratified by the members.
- d. No action will be binding unless approved by a majority of the Directors present at a meeting.
- e. The Commission will adopt an official logo.
- f. The Commission will hold an annual meeting rotating the location of the meeting each year, with telephonic participation provided for, in addition to scheduled regular meetings and special meetings as provided by its bylaws. Notices of special meetings must include the reasons for the meeting and the items to be considered.
- g. The Commission will elect annually, from among its members, a Chairman, a Vice Chairman, and a Secretary/Treasurer. The bylaws of the Commission shall provide for nomination and election of officers.
- h. The Commission will contract at formation for support and administrative functions with the Alaska Municipal League (AML). The Executive Director of the AML will serve as a liaison between the Commission and AML and may appoint necessary staff support. This provision will be revisited within three years of legal formation of the Commission.
- i. The Commission may contract for supplies and professional services, and delegates to AML the same ability on its behalf.
- j. To carry out any purpose or function, the Commission may accept and utilize donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any Member or governmental entity.
- k. The Commission may establish one or more offices for the transacting of its business. Upon formation, its registered office and place of business will be the Alaska Municipal League at One Sealaska Plaza, Suite 200, Juneau, AK 99801.

- l. The Members will adopt the initial bylaws of the Commission. The Commission will make its bylaws easily accessible for Members and prospective members. The power to adopt, alter, amend or repeal bylaws is vested in the Board of Directors unless it is reserved to the Members per the bylaws. The bylaws shall contain provisions for the regulation and management of the affairs of the Commission not inconsistent with this Agreement.
- m. The Commission will provide annual reports to its members covering its activities for the preceding fiscal year. The Commission may make additional reports.

2. Committees.

- a. In furtherance of its activities, the Commission may establish advisory and technical committees by a majority vote of the membership body. Membership on a technical committee, may include private persons and public officials. Committees may consider any matter of concern to the Commission, including issues of special interest to any member and issues pertaining to collection of sales tax on behalf of members.
- b. The Commission may establish additional committees by a majority vote of the membership or Board of Directors as its bylaws may provide.
- c. Committees may not take any action but may recommend action to the Board of Directors for consideration.

3. Powers.

In addition to powers conferred elsewhere in this Agreement and in the bylaws, the Commission may:

- a. Study federal, state and local sales tax systems, and particular types of state and local taxes.
- b. Develop and recommend proposals to promote uniformity and compatibility of local sales tax laws with a view toward encouraging the simplification and improvement of local tax law and administration.
- c. Compile and publish information to support and assist members in implementing the Agreement or assist taxpayers in complying with local government sales tax laws.
- d. Do all things necessary and incidental to the administration of its functions pursuant to this Agreement, including:
  - i. Sue and be sued.
  - ii. Administer provisions of uniform sales tax ordinances pursuant to authority delegated by Members

- f. The Commission may create and adopt policies and procedures for any phase of the administration of sales tax collection and remittance in accordance with this Agreement and the Commission's bylaws, including delegated authority to administer taxation or prescribing uniform tax forms. Prior to the adoption of any policy, the Commission will:
  - 1. As provided in its bylaws, hold at least one meeting after due notice to all members and to all taxpayers and other persons who have made timely requests to the Commission for advance notice of its policy-making proceedings.
  - 2. Afford all affected members and interested persons an opportunity to submit relevant written comments, which will be considered fully by the Commission.
- g. The Commission will submit any policy adopted by it to the designated representative of all Members to which they might apply. Each such Member will in turn consider any such policy for adoption in accordance with its own laws and procedures.
- h. Amend this Agreement by majority vote of the Members.

4. Finance.

- a. At least 90 days prior to the start of a new fiscal year, the Board of Directors will adopt a budget of its estimated expenditures for the upcoming fiscal year and submit to Members.
- b. The Commission will follow a July 1 to June 30 fiscal year.
- c. The Commission's budgets must contain specific recommendations for service fees built into statewide administration. Service fees will account for direct staff and software costs, and indirect costs, as justifiable to the Board of Directors.
- d. The Commission will not pledge the credit of any member. The Commission may meet any of its obligations in whole or in part with funds available to it, provided that it takes specific action to set aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it, the Commission may not incur any obligation prior to the allocation and commitment of funds adequate to meet the same.
- e. The Commission must keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission will be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission will be audited annually by a certified public accountant and the report of the audit will be included in and become part of the annual report of the Commission to Members.
- f. The accounts of the Commission will be open at any reasonable time for inspection by duly constituted officers of the Members, the State of Alaska, and by any

persons authorized by the Commission.

- g. Nothing contained in this Article may be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

**Article V. Membership Requirements; Remote Seller Sales Tax Code.**

1. To obtain and retain full membership, the Local Government must submit either an Ordinance or Resolution authorizing entry into the Agreement, including to:
  - a. Designate the individual at the municipality that may execute initial binding documents on behalf of the municipality and who will be the Member’s representative on the Commission.
2. Once the Commission adopts its bylaws and adopts a uniform Remote Sellers Sales Tax Code, members must submit an Ordinance or Resolution that:
  - a. Delegates remote seller sales tax registration, exemption certification, collection, remittance, and audit authority to the Commission.
  - b. Within one hundred twenty (120) days, adopts, by reference or otherwise, the Remote Seller Sales Tax Code in its entirety as it pertains to collection of sales tax from remote sellers and marketplace facilitators. The Remote Seller Sales Tax Code is provided as “Addendum A”.
3. To retain full membership status, changes made to the Agreement or Code should be ratified by the Member within one hundred twenty (120) days of the date the Commission adopts the change.
4. The Member must provide notice of tax or boundary changes to the Commission and must assure the Commission of the accuracy of rates and exemptions. Rate and exemption changes will take effect within thirty (30) days of the date the Commission receives notice of the tax or boundary change.

**Article VI. Sales Tax Collection and Administration.**

1. Collection; Registration; Remittance.
  - a. Every remote seller and marketplace facilitator meeting the Threshold Criteria of one hundred thousand (\$100,000) in annual sales or 200 annual transactions occurring in Alaska during the current or previous calendar year, shall collect sales taxes from the buyer at the time of sale or service and shall transmit the sales taxes collected to the Commission on a monthly or quarterly basis.
  - b. The Commission will remit and report to Members by the last business day of the month.

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- c. A remote seller or marketplace facilitator meeting the Threshold Criteria shall apply for a certificate of sales tax registration within thirty (30) calendar days of the adoption of this Remote Seller Sales Tax Code and/or within thirty (30) calendar days of meeting the threshold, whichever occurs later. Registration shall be to the Commission on forms prescribed by the Commission as set out in the remote seller sales tax code.
- d. Upon receipt of a properly executed application, the Commission shall issue the applicant a certificate of registration, stating the legal name of the seller, the primary address, and the primary sales tax contact name and corresponding title. A list of registered sellers in good standing shall be distributed to Members, made public and available on the Commission's webpage.

**2. Returns; Confidentiality.**

- a. The Commission will provide all sales tax return information to the taxing jurisdiction, consistent with local tax codes.
- b. All returns, reports and information required to be filed with the Commission under this Code, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:
  - i. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
  - ii. The person supplying such returns, reports and information; or
  - iii. Persons authorized in writing by the person supplying such returns, reports and information.

**3. Title; Penalty and Interest; Overpayment.**

- a. Upon collection by the seller, title to the sales tax vests in the Commission and the member on whose behalf the original tax arose. The Commission shall act as a third-party trustee and remit taxes collected on behalf of the member no later than thirty (30) days after each filing deadline.
- b. The Remote Sellers Sales Tax Code shall establish the per annum interest rate and any applicable penalties for late or non-compliant remote sellers.
- c. Upon request from a buyer or remote seller the Commission shall provide a determination of correct tax rate and amount applicable to the transaction. In the case of an overpayment of taxes, the remote seller shall process the refund and amend any returns accordingly.



4. Audit; Compliance and Enforcement.

- a. The Commission shall have sole audit authority and will make final determinations regarding: (1) whether a remote seller or marketplace facilitator meets Threshold criteria; (2) the accuracy of returns filed by a remote seller or marketplace facilitator with the Commission; and (3) whether a remote seller or marketplace facilitator filing returns with the Commission is in compliance with collection and remittance obligations.
- b. The Commission shall have authority to enforce issues relating to the Remote Sellers Sales Tax Code including, but not limited to, the collection of late fees and penalties, and filing of civil suits and injunctions.

**Article VII. Entry into Force and Withdrawal.**

1. This Agreement will be in force and effective when formally approved by any seven signatories and will terminate if membership falls below seven.
2. Any Member may withdraw from this Agreement through ordinance or resolution rescinding signatory action and giving notice to the Commission of the effective date of the ordinance, with a minimum of 30 days' notice. Withdrawal will not affect any liability already incurred by or chargeable to a Member prior to the effective date of such withdrawal. The obligations of the Commission to remit and report remain until no longer necessary.

**Article VIII. Effect on Other Laws and Jurisdiction.**

Nothing in this Agreement may be construed to:

1. Affect the power of any local government to fix rates or tax exemptions, except that all members must adopt and implement the Commission's common definitions and tax code changes or demonstrate parity or non-applicability.
2. Withdraw or limit the authority of local government with respect to any person, corporation, or other entity or subject matter, except to the extent that such authority is expressly conferred by or pursuant to this Agreement upon another agency or body.
3. Supersede or limit the jurisdiction of any court of the State of Alaska.

**Article IX. Construction and Severability.**

This Agreement shall be liberally construed so as to effectuate its purposes. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision is declared or held invalid by a court of competent jurisdiction, the validity of the remainder of this Agreement and its applicability to any government, agency, person or circumstance will not be affected. If any provision of this Agreement is held contrary to the charter of any member, the Agreement will

remain in full force and effect as to the remaining members and in full force and effect as to the Member affected in all other provisions not contrary to charter.

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