

**Alaska Remote Seller Sales Tax Commission
Board Meeting
May 12, 2021 1:00 pm – 3:00 pm**

Attendees:

- Jeff Rogers
- Mike Tvenge
- Stephanie Queen
- Scott Bloom
- Melissa Haley
- Troy Tankersley
- Brandi Harbaugh

1. Call to order
2. Approval of the Agenda
3. Approval of the Minutes
 - a. 2.24.2021 Meeting minutes
4. New Business
 - a. FY22 ARSSTC Budget proposal / discussion
 - b. MUNIRevs software proposal for members
 - c. Update on member progress re: adopting Uniform Code updates
5. Comments
6. Adjournment

**ARSSTC Board Meeting
February 24, 2021 9:30 am – 11:30 am, Virtual**

Board Present:

- Scott Bloom, City of Kenai
- Melissa Haley, City of Sitka
- Jeff Rogers, City and Borough of Juneau
- Troy Tankersley, City of Wasilla
- Mike Tvenge, City of Kodiak
- Stephanie Queen, City of Soldotna

Others in Attendance:

- Teresa Bowen, City and Borough of Juneau
- Erin Russell, City and Borough of Juneau
- Kara Johnson, AMSTP Sales Tax Administrator
- Karl Kaufman, Landye Bennett Blumstein
- Sean Kelley, Kenai Peninsula Borough
- Clinton Singletary, AMSTP Sales Tax Director

1. Call to order
 - a. Meeting started at 9:33am
2. Approval of the Agenda
 - a. Motion by Scott Bloom. Second by Mike Tvenge, no objection.
3. Approval of the Minutes
 - a. 1/13/21 Board meeting minutes Motion to approve by Troy Tankersley. Second by Melissa Haley, no objection.
4. New Business
 - a. Discussion on member responses to Uniform Code Updates

No negative comments. Heard back from mostly larger communities, but not from smaller ones.

- b. Action on proposed Uniform Code Updates
 - i. Memo from Landye Bennet

Karl Kaufman reviewed memo. Explained that the focus up to this point has been on straight discrimination against remote sellers i.e. treating remote sellers worse than local sellers. There are a number of different tests to apply to assess discrimination, with the internal consistency doctrine being a primary test. The internal consistency doctrine is the question of whether a sales tax code, applied in all 50 states would lead to double taxation. Having services taxed at point of origin for local sellers, but remote sellers taxed at point of destination would violate the internal consistency doctrine.

There are criticisms of doctrine but it is currently the state of the law. Question then is this significant enough risk to deal with now, or wait until legal challenge and quickly deal with the conflict. Most likely the challenge would be from a remote seller bringing a refund claim. A credit for sales tax paid to another jurisdiction could provide resolution.

Juneau currently has exemption for sales out of jurisdiction. They are contemplating replacing that with exemption where any sale outside of jurisdiction is exempt from local tax if and only if it is subject to a tax in another jurisdiction. Not eager to give up revenues if seller does not meet threshold, or delivered into a non-tax jurisdiction.

Scott concerned that a universal fix to Uniform Code is needed, rather than local fixes. Noted that no prohibition on double taxation.

- ii. Services Scenarios

Clinton reviewed the scenarios. We can treat in-state sellers “worse” than out-of-state sellers. Possible to institute different threshold for in-state sellers if that is desired. Current threshold is applied to remote sellers under Wayfair. But threshold is also being used as a de minimis test for local sellers.

Stephanie asked about the concern surrounding leakage / loss of revenue for local jurisdictions. Hesitant to require small local sellers to participate under a lowered threshold.

- iii. Summary of Uniform Code updates

Scott concerned if smaller communities can't pass updates in the 120 days. What are the consequences for not meeting that deadline?

Jeff not too concerned about not getting feedback on the changes from more smaller member jurisdictions. Advantage of these changes will actually accrue to smaller communities. We may need to do more to increase representation from smaller communities on the Board.

Stephanie asked about extending the 120 day timeframe? We can decide to be more flexible and adjust as needed.

Mike understands the need for the change to services, and would need to modify their local code since Kodiak is currently origin based. Is good to make the change to help avoid possible litigation.

Troy requested a version of the memo that can be shared with member councils and assemblies.

Motion by Troy Tankersley to adopt changes to Uniform Code as presented. Second by Mike Tvenge. No opposition, motion passes.

c. Annual review & approval of AML / Commission Service Agreement

Commission Service Agreement, section 6 states will review of MOA after 1 year. No action needed unless amending the agreement. If no action, MOA will be extended for 2 years.

Board has no objection or desired amendments to the Agreement.

d. Penalty Waiver Policy approval

Action requested to adopt. Clinton reviewed proposed policy. Motion to adopt policy by Melissa Haley. Second by Stephanie Queen. No objections, motion passed.

5. Comments

Melissa Haley - as we move forward adopting the code locally, make sure members have final marked up copy.

Karl - smaller communities probably have provisions in codes regarding services, they might not be reviewing code very often, not sure if they know how they can maximize their revenue from the changes.

Jeff - Commission can provide technical support to smaller communities, AML can provide that support as well.

6. Adjournment 10:51am

DRAFT

To: ARSSTC Board

From: Clinton Singletary, Statewide Municipal Sales Tax Director

Re: FY22 Budget Highlights & Staffing detail

FY22 Budget Highlights

On April 22, AML staff met with the Finance Committee for the initial review of the proposed FY22 ARSSTC Budget as shown in Column G of the budget spreadsheet (shaded Orange).

After discussion, the Finance Committee requested an alternative scenario be presented to the Board for comparison. The requested alternative scenario is in Column I (shaded yellow). AML staff is also presenting a second alternative for consideration in Column K (shaded green).

FY22 Proposed Highlights

AML original proposed budget is based on the expectation that Gross Sales Tax Collection will increase to \$10 million. This expected revenue increase will allow for funding a new technician level position at a salary of \$35,000. It also includes funding for the proposed MUNIRevs software update that would allow certain physical presence sellers to file through the ARSSTC portal. The ending fund balance under this proposal would not meet the minimum fund balance as outlined in the Fund Balance Policy.

FY22 Alternate – Requested by Finance Committee

This proposal is based on a more conservative estimate of \$9 million in Gross Sales Tax Collection for FY22. It would still allow for funding the additional staff position and funding the MUNIRevs software update. However, the Commission fee rate paid by members would be increased to 4.6% to help generate a fund balance that is closer to the minimum fund balance from the Fund Balance Policy.

FY22 Alternate 2 – Presented by AML

This proposal presents a slightly higher Gross Sales Tax Collection estimate of \$9.36 million while keeping the Commission fee rate at the current 4% rate. This proposal primarily takes advantage of the flexibility we have in the proposed additional staff person and proposed software update.

This proposal would essentially put the additional staff and software update on hold until the revenue trend for the year becomes more apparent. This approach would avoid increasing costs to Commission members but would also allow for program growth if revenues increase as expected.

ARSSTC Staffing Plan

The FY22 staffing plan strengthens our existing structure and anticipates modest growth as needed. The proposed budget reflects a raise for the sales tax administrator, commensurate with additional responsibilities, and the eventual addition of a technician.

In FY21, AML hired Clinton Singletary to take over as the sales tax program director. Clinton brings a depth of knowledge and experience that has proven incredibly beneficial. Clinton's role has increasingly meant more robust communication about compliance, even as he further developed and refined the uniform code and ARSSTC policy. Clinton is looking into new ways to benefit members, is engaged in bringing on new jurisdictions, and continues to pursue seller registration efforts.

Kara Johnson, as the sales tax administrator, manages much of the seller support and daily operations. Her responsibilities extend to managing some of the communications and outreach, the website, and software improvements. Kara is continually looking for ways to improve the seller experience and to address buyer or jurisdiction challenges.

A sales tax technician may be added in FY22 so that more attention can be given to potential compliance or audit issues. This position is contingent on continued revenue increases, demands on current staff capacity, and the potential for an AML physical sales tax collection / administration program, which would offset some of the costs to the ARSSTC program.

These direct staff of ARSSTC are complemented by AML's support staff, which are an indirect component of the budget and paid for through AML's overhead. AML's executive director remains involved in overall strategy, budget, or to address questions that may come before the board; Dawn Wesley remains responsible for financial management and reconciliation; Dawn interfaces with Shawn Myers, AML's finance officer, to ensure accurate accounting between ARSSTC and AML; and AML has added Lisa Fisher to regularly review accounting procedures and processes, or to problem solve, as a controller.

ARSSTC FY21 Budget to Actuals and Projected as of March 31st, 2021

	FY 21 Budget	FY21 Actuals	FY21 Projected	FY22 Proposed	FY22 Alternate	FY22 Alternate 2
ARSSTC Revenues						
Gross Sales Tax Collection	10,000,000.00	\$ 5,976,344.63	\$ 8,856,344.63	\$ 10,000,000.00	\$ 9,000,000.00	\$ 9,360,000.00
Total	\$ 10,000,000.00	\$ 5,976,344.63	\$ 8,856,344.63			
Commission Fee Rate		4%	4%	4%	4.60%	4%
Commission Fee	400,000.00	\$ 239,834.74	\$ 354,253.79	\$ 400,000.00	\$ 414,000.00	\$ 374,400.00
MuniRev Fees (12,8,4%)	1,200,000.00	\$ 717,621.98	\$ 1,062,761.36	\$ 1,200,000.00	\$ 1,080,000.00	\$ 1,123,200.00
TTR Software Contract (1.25,1,.75%)	125,000.00	\$ 74,752.33	\$ 110,704.31	\$ 125,000.00	\$ 112,500.00	\$ 117,000.00
Member Tax Revenue	8,275,000.00	\$ 4,941,584.11	\$ 7,328,625.18	\$ 8,275,000.00	\$ 7,393,500.00	\$ 7,745,400.00
ARSSTC Expenses	\$ 10,000,000.00	\$ 5,973,793.16	\$ 8,856,344.63	\$ 10,000,000.00	\$ 9,000,000.00	\$ 9,360,000.00
Subtotal	Difference	\$ -	\$ 2,551.47	\$ -		
AMSTP						
Commission Fee	400,000.00	\$ 239,834.74	\$ 354,253.79	\$ 400,000.00	\$ 414,000.00	\$ 374,400.00
Interest Income		\$ 148.79	\$ 200.00	\$ 250.00	\$ 250.00	250
Credit Cards Fees		\$ 493.26	\$ 1,000.00	\$ 800.00	\$ 800.00	800
Reprocessing Fees		\$ 650.00	\$ 800.00	\$ 1,000.00	\$ 1,000.00	1000
Late fees		\$ 10,000.00	\$ 14,000.00	\$ 12,500.00	\$ 12,500.00	12500
Fee override to MR/TTR		\$ (1,496.20)	-	\$ -	\$ -	0
Uncategorized Income			\$ 50.00	\$ -	\$ -	0
AMSTP Rev	Total: AMSTP Revenue	\$ 400,000.00	\$ 249,630.59	\$ 370,303.79	\$ 414,550.00	\$ 428,550.00
AMSTP Wages	Personnel					
Regular Wages		\$ 132,598.61	\$ 264,518.37	\$ 285,000.00	\$ 285,000.00	\$ 255,000.00
Retirement		\$ 6,644.98				
Health Insurance		\$ 33,596.41				
Federal Taxes		\$ 11,186.37				
Total: Personnel	265,200.00	\$ 184,026.37	\$ 264,518.37	\$ 285,000.00	\$ 285,000.00	\$ 255,000.00
AMSTP Services	Contract Services					
MuniRev Software Add on				\$ 13,500.00	\$ 13,500.00	\$ -
AML Contract Overhead (8%)	26,416.00	\$ 20,452.12	\$ 25,504.77	\$ 27,960.00	\$ 27,960.00	\$ 25,560.00
Governance Transport/Subsistence	5,000.00			\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
Insurance Premium	15,000.00	\$ 10,975.84	\$ 15,230.44	\$ 16,000.00	\$ 16,000.00	\$ 16,000.00
Banking Fees	2,500.00	\$ 136.01	\$ 250.00	\$ 500.00	\$ 500.00	\$ 500.00
Legal Services	30,000.00	\$ 28,612.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00
Audit Services	10,000.00	\$ 9,050.84	\$ 9,050.84	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
Software		\$ 16,900.00	\$ 16,900.00	\$ -	\$ -	
Merchant Service Fees	2,500.00	\$ 3,051.06	\$ 3,500.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00
Other Business Expenses		\$ 0.03	\$ 10.00	\$ -	\$ -	
Total: Services	88,916.00	\$ 89,177.90	\$ 100,446.05	\$ 105,960.00	\$ 105,960.00	\$ 90,060.00
Total Expenditures	\$ 354,116.00	\$ 273,204.27	\$ 364,964.42	\$ 390,960.00	\$ 390,960.00	\$ 345,060.00
Beginning Fun Balance	\$ 31,414.33	\$ 31,414.33	\$ 31,414.33	\$ 36,753.69	\$ 36,753.69	\$ 36,753.69
Change to Fund Balance	\$ 45,884.00	\$ (23,573.68)	\$ 5,339.36	\$ 23,590.00	\$ 37,590.00	\$ 43,890.00
Ending Fund Balance	\$ 77,298.33	\$ 7,840.65	\$ 36,753.69	\$ 60,343.69	\$ 74,343.69	\$ 80,643.69
Minimum Fund Balance - 20% of annual expenditures	70,823.20	\$ 54,640.85	\$ 72,992.88	\$ 78,192.00	\$ 78,192.00	\$ 69,012.00
Maximum Fund Balance - 25% of annual expenditures	88,529.00	\$ 68,301.07	\$ 91,241.11	\$ 97,740.00	\$ 97,740.00	\$ 86,265.00

To: ARSSTC Board

From: Clinton Singletary, Statewide Municipal Sales Tax Director

Re: Proposal to collect physical presence revenues thru MUNIREvs portal

Background

A number of remote sellers remitting through the ARSSTC MUNIREvs portal also have physical presence in some member jurisdictions. Currently, these businesses file returns directly with each member jurisdiction where they have physical presence to report both their physical sales and their remote sales into that jurisdiction. Then, they also file a return with the Commission for remote sales into all other member jurisdictions.

This filing requirement frequently receives negative responses from affected sellers, primarily due to apparent difficulties in pulling the pertinent sales info from their system and reporting in the correct manner. Reporting all their Alaska sales through the Commission portal was their desired approach.

AMSTP staff approached MUNIREvs for a possible solution, recognizing that the sales reported directly to member jurisdictions are not remote sales, and should not be subject to the same level of fees that are charged on remote revenues. MUNIREvs has presented an option that would allow for a 1% MUNIREvs fee to be charged on those physical presence revenues instead of the 12% MUNIREvs rate for remote revenues. AML would also adjust its rate for the physical presence revenues to .25%. Cost for the upgrade is quoted at \$13,500 and is included in the FY22 budget proposal. MUNIREvs estimates a total 9 weeks to complete the upgrade once approved.

There are a wide range of sellers that could benefit from this solution, but we are only wanting to grant this option to a specific type of seller, multi-level marketing (MLM) companies. It would not be in member's best interests to allow companies such as Walmart or Target with significant physical presence revenues to participate, even with the reduced rate to members.

Proposal / Process

I am looking to the Board for approval to present this proposal to Commission members as follows:

- Email to members, outlining the scope of proposal including the adjusted rate and limited application to MLM companies,
- Ask members to respond with their desired level of participation:
 - No participation
 - Limited participation - member wants to approve each MLM business that submits a request.
 - Full participation – member does not need to approve each request, provided the request is from an MLM company.
- We'll provide a list of MLM companies that are currently reporting through the Commission so members will have a reference for the impacted revenues. Currently there are 20 MLM companies registered and reporting some of their sales through the Commission.

If the overall response from members is negative, i.e. not interested in participating, we won't pursue the proposal any further. In order to be most beneficial to MLM companies, we are looking for a strong majority of members to be open to at least limited participation with a solid number of full participation members.

To: ARSSTC Board

From: Clinton Singletary, Statewide Municipal Sales Tax Director

Re: Member progress on adopting Uniform Code updates

The Uniform Code updates were adopted by the ARSSTC Board on February 24, 2021. Under the terms of the Intergovernmental Agreement, members have 120 days to adopt changes or amendments to the Uniform Code. The deadline for members to adopt changes is June 24, 2021.

Of the 36 members that adopted the original Uniform Code, 21 members originally adopted by reference. Of the 15 members that originally adopted the Uniform Code in full, 3 have adopted the Uniform Code updates. Five of these members are actively working towards adoption. The seven remaining members have not given a status update.

The remaining seven members have been contacted to remind them of the upcoming June 24 deadline and to offer any assistance that might be needed.