

POSSIBLE MOTION

I MOVE TO rescind
Sales Tax Interpretation 11-04.

Memo

Thru: Mark Gorman, Municipal Administrator

To: City and Borough of Sitka Assembly

From: Jay Sweeney, CFAO

Date: August 5, 2015

Re: Rescission Of Sales Tax Interpretation 11-04 Regarding Sales Taxability of Fund Raisers

Mayor McConnell and Assembly Members,

In 2012, I issued a Sales Tax Interpretation under the auspices of SGC 4.09.400 in regards to the sales taxability of "fund raisers" by non-profit entities.

Under Title 4 of the Sitka General Code, sales made by non-profit entities are taxable unless exempted by one of the 28 existing exemptions under SGC 4.09.100. A common exemption is 4.09.100 L, which exempts sales by non-profits which do not have regular business hours and paid employees. Many larger non-profits do currently collect and remit taxes on their sales.

In the past, the question of what exactly constitutes a sale by a non-profit was raised, in regards to annual fund raising events. At such events, tickets are sold and merchandise may be sold or auctioned. At the same time, such events are often designed to raise funds for the non-profit, to help pay for programs and administrative costs. As result of some ambiguity as to what exactly constitutes a sale by a non-profit, Sales Tax Interpretation 11-04 was issued in 2012 (attached).

The line has become blurred, however, as some non-profits have advanced the argument that everything the sell in regards to services, etc. is a fund raiser and, thus, not subject to taxation.

Thus, if the proposed ordinance establishing a new Non-profit Activities Fund is passed by the Assembly, a potential loophole may exist in Sales Tax Interpretation 11-04 unless it is either rescinded or clarified.

In light of the proposed ordinance establishing the Non-Profit Activities Fund, I recommend that the Assembly rescind Sales Tax Interpretation 11-04, making fund-raisers by non-profits subject to sales taxation. If the Assembly is not in favor of this recommendation, then I would alternatively recommend that the Assembly direct staff to revise Sales Tax Interpretation 11-04 to more precisely clarify exactly what a non-profit fund raiser is and how often such events can be conducted without sales tax.



City and Borough of Sitka

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Sales Tax Interpretation 11-04

Definition of Casual Sales for Non-Profit Organizations

Per the City and Borough of Sitka General Code 4.09.010 Levy of sales tax...

A. There is levied a consumer's sales tax on sales, rents, and leases made in the city and borough of Sitka. This tax applies to sales, rentals, and leases of tangible personal property; sales of services sold within the city and borough of Sitka; sales of services performed wholly or partially within the city and borough of Sitka when the provision of such services originates or terminates within the city and borough of Sitka; and rentals and leases of real property located within the city and borough of Sitka.

Since all sales/services, rents, and leases are subject to the sales tax then first one must determine if the non-profit is exempt from collecting sales tax. SGC 4.09.100 (L) states...

L. Nonprofit Charitable Organizations. Sales made by nonprofit charitable organizations which do not have paid employees and which do not keep normal business hours are exempt.

If the non-profit charitable organization keeps regular business hours or has any paid employees, then this organization is required to levy sales tax. If the non-profit charitable organization is a business required to levy sales tax, then one must look at the sales transaction to determine if it is exempt from sales tax. SGC 4.09.100(A) states...

A. Casual Sales. A casual and isolated sale not made in the regular course of business is exempt from the levy of sales tax imposed by Section 4.09.010(A).

And finally the Free Dictionary.com defines fundraiser as...

The organized activity or an instance of soliciting money or pledges, as for charitable organizations or political campaigns.

Thus, it is the City and Borough of Sitka's determination that a fund-raiser for a non-profit organization, that meets the qualifications to levy sales tax, is not subject to sales tax if it is a one time occurrence per year. This organized activity selling goods/services must not be a regular ongoing business activity to qualify for a casual sale exemption. Therefore, an annual fundraising banquet would not be subject to sales tax.

February 28, 2012

Prepared by: Brenda Calkins, Sales Tax Auditor

Approved by: John P. (Jay) Sweeney III, Finance Director

CC: Marjorie Parmelee, Sales Tax Clerk

Interpretation 11-04

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