

Possible Motion

I MOVE TO adopt the Chief Finance and Administrative Officer's interpretation of Sitka General Code 4.09 "Sales Tax" as is relates to the application of the taxable transaction limit to long-term service and construction contracts.

Memo

Through: Hugh Bevan, Interim Municipal Administrator *HB*
To: Assembly of the City and Borough of Sitka
From: Jay Sweeney, Chief Finance and Administrative Officer
Date: January 7, 2020
Re: Sales Tax Interpretation 20-3, Application of Taxable Transaction Limit to Long-Term Service Contracts

Issue

Municipal sales tax employees have recently received questions as to how the taxable transaction limit of \$12,000 per single sale unit applies to long-term service and construction contracts. To provide guidance to sales tax employees in the performance of their job duties, the Chief Finance and Administrative Officer has made a sales tax interpretation regarding the application of the taxable transaction limit to long-term service and construction contracts and, in accordance with SGC 4.09.400, the interpretation is hereby forwarded to the Assembly for adoption or rejection.

Facts

1. Municipal sales tax employees are consistently asked questions regarding the meaning and interpretation of Chapter 4.09 of the Sitka General Code. Most questions pertain to whether or not certain business transactions are exempt from sales tax.
2. Per SGC 4.09.400, it is the responsibility of the Finance Director to develop rules and regulations for the interpretation of Sales Tax code and pass them to the Assembly for adoption or rejection.
3. Over the last 30 days, Municipal sales tax employees have requested that the Finance Director issue a sales tax interpretation as to how the taxable transaction limit of \$12,000 per single sale unit applies to long-term service and construction contracts. The interpretation, 20-03, is attached.

Discussion

1. Questions have been asked contractors and service providers as to how such services are to be bundled together for purposes of possibly exceeding the \$12,000 taxable transaction threshold. In particular, long-term construction contracts or agreements may provide for periodic invoicing for draws, and, the question has arisen as to whether or not each separate

draw is to be considered a single sale unit.

2. In reaching his decision, the Finance Director examined associated facts and applied logical analysis. An over-arching guideline employed by the Finance Director in reaching his decision was the presumption of taxability set forth in the Sitka General Code. This presumption of taxability assumes that all sales in Sitka are for a taxable purpose unless otherwise exempted. This presumption implies that if a situation is unclear, the transaction should be taxable.
3. It is important to note that the Assembly passed a Resolution to join the Alaska Joint Seller Sales Tax Commission. In doing so, the Assembly committed to one of the membership stipulations, which is adoption of the Alaska Remote Seller Sales Tax Code as it applies to remote (ecommerce) sales. The Alaska Remote Seller Sales Tax Code contains primary and supplemental definitions of terminology pertaining to remote sales. Accordingly, circumstances may arise wherein definitions or interpretations of terminology by the Alaska Joint Seller Sales Tax Commission affecting remote sales may differ from definitions or interpretations affecting local "brick and mortar" sales. Legal counsel advising the Alaska Joint Seller Sales Tax Commission have stated that some differences between the treatment of brick and mortar stores and remote sellers is acceptable, but large aberrations in treatment pose a potential risk if they are considered to pose an undue burden to interstate commerce. Primary and supplemental definitions as well as the Alaska Remote Seller Sales Tax Code were approved by the Alaska Joint Seller Sales Tax Commission on January 6 and are attached. The attachments are still in draft form as approval on January 6 has not afforded enough time for final versions to be produced.
4. The Alaska Joint Seller Sales Tax Commission has yet to define or interpret what a sale unit is for purposes of applying the taxable transaction limit. The Commission has, however, interpreted construction contracts which result in a tangible physical product to be manufacturing.

Recommendation

Staff recommends that the Assembly adopt the accompanying sales tax interpretation 20-3, Application of Taxable Transaction Limit to Long-Term Service Contracts.