

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 sales of food containers and condiments.

Memo

Through: Hugh Bevan, Interim Municipal Administrator 
To: Mayor Gary Paxton and Assembly Members
From: Jay Sweeney, Chief Finance and Administrative Officer
Date: January 7, 2020
Re: Sales Tax Interpretation 20-2, Sales of Food Containers and Condiments

Issue

Municipal sales tax employees have recently received questions as to whether purchases of food containers and condiments constitute purchases for taxable resale and are, therefore, exempt from sales taxation. 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 purchases of food containers and condiments 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 regarding whether or not purchases of food containers or condiments constitute purchases for taxable resale. The interpretation, 20-02, is attached.

Discussion

1. Questions have been received by restaurants as to whether or not food containers and condiments which are provided to customers as part of the carry-out food or beverage they purchase are considered to have been resold in a taxable transaction, and, are the associated purchases of the containers by the restaurants are therefore exempt from sales taxation. Examples of such items are styrofoam food containers, paper cups, condiment

packages, napkins, pizza boxes, etc.

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 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 definition of "goods for resale" is as follows:

"(A) the sale of goods by a manufacturer, wholesaler or distributor to a retail vendor, or sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer. (B). Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer, and, (C) Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure".

The attached interpretation adheres to the Commission's definition of "goods for resale". It is important to note that the Commission is still in its infancy and has yet to issue any interpretations of definitions or terminology as they impact remote sales.

Recommendation

Staff recommends that the Assembly adopt the accompanying sales tax interpretation 20-2, Sales of Food Containers and Condiments.