

## **POSSIBLE MOTION**

I MOVE TO adopt the Chief Finance and Administrative Officer's interpretation of Sitka General Code 4.09.350(C) "Waiver of Penalties".



## Sales Tax Interpretation 17-03

### Additional Clarification of Sales Tax Cap Exemption pertaining to invoices and sale units

Per the City and Borough of Sitka General Code (SGC) 4.09.350 (C), Waiver of Penalties, states:

*Penalties from a delinquent tax remission shall be waived if:*

- 1. The seller submits a penalty abatement request form to the finance department within seven calendar days of the due date and has paid the delinquent tax in full;*
- 2. The seller has no past due balances with any department of the city and borough of Sitka; and*
- 3. The finance department verifies that the seller has not filed a late sales tax return or been granted an abatement within three years of the request for abatement.*

A question has arisen as to procedural guidelines apply when a business who would otherwise be eligible for a penalty abatement does not submit a penalty request form to the Finance Department within seven days of the due date, as a result of not knowing that an abatement provision exists.

The core issue in question is whether or not Finance Department personnel have an inherent responsibility to inform eligible businesses that they could receive a late filing penalty abatement if a form is submitted, or, whether it is incumbent upon the business to inquire if any abatement process exists.

In the case in point, a business filed its sales tax return in person one day late, due to illness, and paid the tax due in full. The business did not inquire as to an abatement when the tax return was filed, and, Finance employees in Customer Service did not inform the business owner of the existence of an abatement process. It is important to note that Finance Customer Service personnel do not have access to historical sales tax filing information in order to be able to determine if an abatement is feasible; that information is maintained in the Sales Tax Department.

The business owner did not include a penalty with the tax return (Line 10) and the routine processing of the return by Sales Tax Section employees, which discovered the non-payment of the penalty, occurred after the close of the seven-day abatement request period. The business

owner is challenging the penalty on the grounds that the business was not notified that it could request an abatement during the applicable 10-day period.

Review by the Municipal Attorney of the Sitka General Code SGC 4.09.350 (C) has determined that no provision requires Municipal employees to notify every business qualifying for an abatement that one exists, and, that the public process for advertising the actions of the Assembly technically serve as notice for all businesses.

At the same time, however, senior Municipal officials feel that it was the intent of the Assembly, when the sales tax abatement guidelines were approved, that abatements be extended to all applicable businesses, and, that good customer service requires some flexibility in code interpretation.

It is my decision, under the authority granted to me by SGC 4.09.400, that the interpretation of SGC 4.09.350 (C) be broadened as follows:

If (1) a business files a delinquent sales tax return within seven days after the filing date and remits all taxes due, and, (2) that business would otherwise be eligible for a sales tax abatement by meeting all eligibility criteria other filing an abatement request within a seven-day period, and (3) the business subsequently requests an abatement within 30 days after the filing deadline stating that not knowing of the existence of the abatement process was the reason for not filing the request within the seven-day window, then that business shall be granted a penalty abatement.

This decision shall stand temporarily implemented until either adopted or rejected by the Assembly of the City and Borough of Sitka.

June 1, 2017

John P. Sweeney III  
Chief Financial and Administrative Officer