


## **Possible Motion**

**I MOVE TO** adopt the Chief Finance and Administrative Officer's interpretation of Sitka General Code 4.09 "Sales Tax" as it relates to the definition of the term resale.

# 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 20-4, Definition of the Term Resale

---

## Issue

Municipal sales tax employees have consistently received questions as to whether or not specific transactions constitute a purchase for resale, or, the purchases of goods or services necessary to facilitate the resale. The sale for resale concept is not well understood by the public. Recently, such situational questions have become more pervasive requiring the Finance Director to make a broad interpretation of the term resale. To provide guidance to sales tax employees in the performance of their job duties, the Chief Finance and Administrative Officer has defined the term resale 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 define the term resale, so that situational questions pertaining to whether purchases are for resale can be consistently answered.

## Discussion

1. An area in which situational questions regarding sales taxability are consistently raised is sale for resale. SGC 4.09.100 (P) exempts sales for subsequent taxable resale from taxation. Grey area questions consistently arise in regard to purchases of goods or services which are not directly marked up and resold in a retail transaction but, instead, are consumed in a

manufacturing process or in performing a service.

2. Not all purchases of goods or services by a manufacturer, or service provider are resold. The preparation of an income tax return for a business, for example, differentiates between cost of goods sold and other business expenses such as supplies, advertising, etc. Business expenses reported on an income tax return would clearly not be purchases for resale.
3. 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.
4. 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.
5. 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 20-4, Definition of the Term resale.