

Sales Tax Interpretation 20-02

Sales of Food Packaging Materials and Condiments

The Finance Director has made a sales tax interpretation that sales of food packaging materials are not considered sales for further resale, and are thus not considered tax exempt under SGC 4.09.100 (P), unless the final retail customer is charged for such materials. If the selling price of the food contained in the food packaging materials is the same regardless of whether food packaging materials are used or not, the customer is considered to not be charged for such materials. This interpretation must now be either adopted or rejected by the Assembly, per SGC 4.09.400.

Facts:

1. SCH 4.09.100 (P) states that *"a sale for resale of a product, service or rental to a consumer where the resale is subject to tax is exempt"*.
2. Several businesses in the Municipality have raised the question as to whether food packaging materials used to package food sold to the public are considered resales of a product and, thus, exempt from sales taxation.
3. There is no common standard across Alaska, or the United States, specifying whether or not food packaging materials supplied with food are considered to be resold. Some taxing jurisdictions consider food containers and other food packaging items to be a supply cost and not a cost of goods sold. Accordingly, such supplies are reported to taxing authorities on tax returns as a supply expenses and any sales tax paid is deductible. Other taxing jurisdictions take the opposite stance. Juneau considers most (but not all) food packaging materials to be a resale. Ketchikan Gateway Borough considers some food packaging to be resale.
4. Over-arching guidance in the Sitka General Code is that *"all property purchased or sold by any person for delivery into the city and borough of Sitka is presumed to be purchased or sold for a taxable use in the city and borough of Sitka"* (SGC 4.09.030 A (2)).

Discussion:

1. The most common standard or definition of a sale for resale is when a specific identifiable item of tangible personal property is purchased from a wholesaler or distributor, then resold in a retail establishment for a higher price. Such sales from a wholesaler or distributor are exempt from taxation per SCH 4.09.100 (P).
2. When tangible personal property is either (1) consumed or transformed in a manufacturing process; (2) transferred to a customer as part of the retail sale of a group or mixture of items; or (3) provided as a courtesy to retail customers, such transformations or sales are not straight-forward. Each such transaction or occurrence must be evaluated based upon what has transpired.
3. When food is prepared and sold to the public in retail sales, quite often food packaging containers are supplied at no additional cost because the food could not otherwise be served without the container. This is not always the case, however. Sometimes, bulk quantities of food packaging materials and condiments are made commonly available for customers to use as they need to. Examples are napkins, sugar packets, hot beverage sleeves, and lids.
4. Occasionally, containers are only provided if a customer requests them, as a courtesy. Common examples are doggie bags and foil for wrapping uneaten portions at restaurants.

5. Finally, sometimes standard condiment items are provided in more-or-less standard quantities along with resold food regardless of whether the customer requests them or not. An example would be a cellophane-wrapped packet of plastic cutlery and napkins provided with a take-out meal.
6. Treatment for Federal income tax purposes provides a useful proxy for whether or not food containers, condiments and similar items are considered supply expenses or costs of goods sold.
7. In responding to questions of policy determination, especially where interpretation is not clear-cut, I fall back on (SGC 4.09.030 A (2), which states that *"all property purchased or sold by any person for delivery into the city and borough of Sitka is presumed to be purchased or sold for a taxable use in the city and borough of Sitka"* . Thus, if a difficult decision must be made and the answer is not clear-cut, I follow the presumption of taxability guidance and determine the sale to be taxable.
8. Very detailed questions of tax code interpretation are commonplace throughout Alaska and the United States. What is perhaps different is that such interpretations must be adopted by elected officials, as opposed to implemented by administrative policy.

Interpretation

Unless a customer is specifically charged for food containers, condiments, or other similar items provided in conjunction with the retail sale of food, such items are considered to be the sale of consumable supplies and not a sale for further resale, for purposes of taxation under Chapter 4.09 of the Sitka General Code. This is in keeping with the over-arching presumption of taxability in (SGC 4.09.030 A (2), wherein all sales in Sitka are considered to be for a taxable purpose unless otherwise exempted.

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To be submitted to the Assembly for ratification