

If this item is pulled from the Consent Agenda the following motion is suggested:

POSSIBLE MOTION

I MOVE to adopt the Finance Director's interpretation of that bulk rental of lodging by an organization, with the intent to charge individual students for housing in conjunction with a youth summer camp, is exempt from sales tax and hotel, motel, bed and breakfast transient room tax.



Sales Tax Interpretation 14-01

Clarification of Student Camp Tax Exemptions

The City and Borough of Sitka General Code section 4.09.100 (Z) states that “*Fees charged for nonprofit youth camps primarily serving persons under eighteen years of age are exempt (from sales tax)*”.

The City and Borough of Sitka General Code section 4.24.050 states that “*The provision of housing to students attending youth recreation, summer and similar camps primarily serving persons under eighteen years of age are exempt from the tax levied in this chapter, which is commonly called the ‘bed tax’*”.

A question has arisen as to whether the bulk rental of lodging by an organization, with the intent to charge individual students for housing in conjunction with a youth summer camp, is subject to the tax exemptions listed above.

It is my interpretation of the Sitka General Code that the intent of the exemptions, when enacted by the Assembly, was to ensure that no portion of the procurement chain for lodging in conjunction with a youth summer camp was to be taxed.

It is, therefore, my determination as Finance Director, as authorized by Section 4.09.400 of the Sitka General Code, that the bulk rental of lodging by an organization, with the intent to charge individual students for housing in conjunction with a youth summer camp, is exempt from sales tax and hotel, motel, bed and breakfast transient room tax. This determination is hereby promulgated and shall be submitted to the Assembly for adoption or rejection. Until such time as the Assembly takes action on this interpretation, this interpretation shall govern all applicable business transactions within the City and Borough of Sitka.

February 10, 2014

John P. Sweeney III
Finance Director

4.09.400 Rules and regulations.

The finance director shall from time to time cause to be promulgated rules and regulations as are necessary and advisable to provide for the application and interpretation of this chapter and to submit them to the assembly for its adoption or rejection, and to cause to be provided methods and forms for reporting and collecting the tax in accordance with this chapter and regulations. (Ord. 03-1758 § 4(B), 2004.)

CITY AND BOROUGH OF SITKA**ORDINANCE NO. 03-1758****AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING TITLE 4, REVENUE AND FINANCE, OF THE SITKA GENERAL CODE TO REPEAL SITKA GENERAL CODE CHAPTER 4.08, SALES TAX, AND ENACTING A NEW CHAPTER 4.09, SALES TAX**

1. **CLASSIFICATION.** This ordinance is of a permanent nature, and is intended to become a part of the Sitka General Code.

2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

3. **PURPOSE.** Chapter 4.08, Sales Tax, of the Sitka General Code is being replaced with a revised version based on the recommendations of the Sales Tax Committee, Finance Department, Legal Department, and work sessions with the City and Borough of Sitka's Assembly. The new Chapter 4.09, Sales Tax, contains definitions to clarify areas of contention between businesses and staff on interpretation of the existing Code.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that:

A. Title 4 of the Sitka General Code is hereby amended by repealing Chapter 4.08, Sales Tax.

B. Title 4 of the Sitka General Code is hereby amended by adding a new Chapter 4.09, Sales Tax, as follows:

Chapter 4.09 Sales Tax**4.09.010 Levy of sales tax.**

- (a) There is levied a consumer's sales tax on sales, rents, and leases made in the City and Borough of Sitka. This tax applies to sales, rentals, and leases of tangible personal property; sales of services sold within the City and Borough of Sitka; sales of services performed wholly or partially within the City and Borough of Sitka when the provision of such services originates or terminates within the City and Borough of Sitka; and rentals and leases of real property located within the City and Borough of Sitka. Notwithstanding any provision of law, air or sea charter services, provided a person or entity in the business of providing such charter services, are exempt from sales tax by the City and Borough of Sitka if the charter does not commence and end within the City and Borough of Sitka.
- (b) The rate of levy of the sales tax levied under (a) of this section is five percent on sales

made during the months of October, November, December, January, February, and March. Effective April 1, 2004 the rate of levy of the sales tax levied under (a) of this section is six percent on sales made during the months of April, May, June, July, August, and September. The rate of levy of the sales tax shall become five percent all year around three days after the Administrator certifies in writing to the Assembly that either (a) any and all bonds issued pursuant to the ratification by the voters on March 18, 2003 of propositions set out in Ordinances Nos. 02-1707 and 02-1712 are entirely paid off or (b) the seasonal sales tax increase of one percentage point on sales made during the months of April, May, June, July, August, and September described in the previous sentence has generated (or-based on historical projections-will generate in the next succeeding quarter) sufficient revenues to pay off any and all bonds issued pursuant to the ratification by the voters on March 18, 2003 of propositions set out in Ordinances Nos. 02-1707 and 02-1712, whether or not such bonds have been paid off.

- (c) All moneys accumulated under the terms of this chapter shall be deposited by the Finance Director in the General fund of the City and Borough of Sitka and shall be used for the general operating expenses of the City and Borough of Sitka in such proportion as deemed advisable from time to time by the Assembly.

4.09.020 Collection of tax.

The tax described in SGC 4.09.010(a) is imposed on the purchaser and must be collected by the seller and paid to the City and Borough of Sitka by the seller as provided in SGC 4.09.270. The seller holds all taxes collected in trust for the City and Borough of Sitka. The tax must be applied to the sales price.

4.09.030 Presumption of taxability; sales price and purchase price.

- (a) In order to prevent evasion of the sales tax and to aid in its administration, it is presumed that:
- (1) all sales by a person engaging in business are subject to the sales tax; and
 - (2) all property purchased or sold by any person for delivery into the City and Borough of Sitka is purchased or sold for a taxable use in the City and Borough of Sitka.
- (b) In a sale in which the amount of money paid does not represent the value of the property or service purchased, the sales tax must be imposed on the value of the property or service purchased.
- (c) For purposes of this chapter, the sales price or purchase price of property must be determined as of the time of acquisition.
- (d) For purposes of this chapter, a sale of services occurs at the time the services are provided.

4.09.040 Separate statement of tax; no advertising to absorb or refund tax.

- (a) If any person collects a tax in excess of the tax imposed by SGC 4.09.010(a), both the

tax and the excess tax must be remitted to the City and Borough of Sitka.

- (b) The sales tax must be stated separately for all sales, except for sales from coin-operated or currency-operated machines, sales of drinks in a bar, sales on the dock, sales from street vending carts, admission fees, taxi fares, and other sales as determined by regulation by the Assembly of the City and Borough of Sitka.

4.09.100 Exemptions.

The following sales are exempt from taxation:

- (a) **Casual Sales.** A casual and isolated sale not made in the regular course of business is exempt from the levy of sales tax imposed by SGC 4.09.010(a).
- (b) **Church Sales.** Sale of tangible property or the sale of services by a church are exempt, except where the sale or service is incidental to a business for a profit.
- (c) **Court Fixed Fees.** Any sale where the price is fixed by law, by a court of competent jurisdiction, or by other authority beyond the control of the seller, and where, if the tax were applied, in effect would become an income tax upon the seller, is exempt.
- (d) **Dues and Fees.** Dues or fees paid clubs, labor unions and fraternal organizations are exempt.
- (e) **Federal and State Prohibitions.** A sale which the municipality is prohibited from taxing under the Constitution and laws of the United State or the Constitution of the State of Alaska is exempt.
- (f) **Freight and Wharfage.** Freight and wharfage charges, whether arising out of foreign, interstate or intrastate commerce, are exempt. Warehouse and storage services are taxable.
- (g) **Governmental Agencies.** A sale directly to the United States government, the State of Alaska and its political subdivisions, the City and Borough, or any departments thereof, is exempt. Any sale made to Sitka Tribe of Alaska made on or after January 1, 2002 is exempt.
- (h) **Insurance.** The sale of insurance policies, guaranty bonds, and fidelity bonds are exempt.
- (i) **Loans.** The loaning of money and interest charged for loans is exempt.
- (j) **Medical and Veterinary Services.** Medical, dental, hospital, and veterinary services are exempt. The sale of hearing aids and medicinal preparations when prescribed by a licensed practitioner are exempt. Medical, dental, hospital, and veterinary services do not include services rendered by chiroprodists, barbers, cosmeticians, masseurs, nor do they include the clipping, grooming, or boarding of animals.
- (k) **Newspapers.** The sale of daily newspapers to a consumer is exempt.
- (l) **Nonprofit Charitable Organizations.** Sales made by nonprofit charitable organizations which do not have paid employees and which do not keep normal business hours are exempt.
- (m) **Outside City and Borough.** Sales of goods or services resulting from orders received from outside the City and Borough by mail, telephone, or other similar public

communication where delivery of the property ordered is made outside the City and Borough by mail or common carrier are exempt.

- (n) Over One Thousand Dollars (\$1,000) on Sales and Rents of Tangible Personal Property and on Sales of Services, and Over One Thousand Dollars (\$1,000) in Rent or Lease of Real Property on a Monthly Basis. That portion of a selling price for a single piece of equipment or tangible personal property or sale unit in excess of one thousand dollars (\$1,000) is exempt. A single sale unit is:
1. Any retail merchandise sale where the selling price is totaled on one invoice or any sales slip, although this exemption does not apply if any portion of the invoice or sales slip refers to more than one business day; or
 2. Any sale of services sold by an individual unit price.
- Notwithstanding any other provision of law, the exemption described in this subsection does not apply to any "running" invoice or sales slip representing the sale of items or commodities which are not services. The exemption described in this subsection applies to any sales of services in which services provided to more than one individual are packaged together or "bundled" for purposes of payment on one invoice or sales slip to the extent that such individuals are members of the immediate family of the person making the payment and the person making the payment provides to the seller a certification of such relationship on a form provided by the City and Borough. For purposes of this subsection, "members of the immediate family" are the individual's spouse, children, parents, parents-in-law, siblings, grandparents, and grandchildren. Notwithstanding any other provision of law, if a seller can provide an invoice prepared no later than March 31, 2004 and evidence of an accompanying deposit of money that was received by the seller no later than March 31, 2004 as a down payment on the selling price for a single piece of equipment or tangible personal property or a single sale unit, the changes enacted by Subsection 4.09.100(n) in Ordinance No. 03-1758 do not apply.
- (o) Public Food. The sale of food and beverages to the public in a school district or college cafeteria or lunchroom which are operated primarily for teachers and students and not for profit is exempt.
- (p) Resale. A sale for resale of a product, service or rental to a consumer where the resale is subject to tax is exempt.
- (q) Student Transportation. The service of transporting students to and from a school in vehicles is exempt.
- (r) Telephone and Telegraph. Telephone conversations and telegraph messages are exempt. Telephone service to subscribers residing within the City and Borough is taxable.
- (s) Service Performed by a Licensed Undertaker or Mortician. Fees charged by a licensed undertaker or mortician for services and goods supplied in the course of the undertaking business are exempt.
- (t) Long-Term Motor Vehicle and Equipment Rentals. The long-term lease or rental of motor vehicles and equipment is exempt. "Long-term" is defined as being a

period of at least thirty consecutive days.

(u) Exemption for Games of Skill and Chance. Sales of lottery tickets and other forms of games of skill and chance allowed under SGC 10.40.020 are exempt.

(v) Government-Funded Agencies. Agencies or organizations which derive eighty percent (80%) or more of their revenue from local, state, or federal government sources are exempt from paying sales tax if:

1. In order to qualify for this exemption an organization must file an annual report setting out its qualifications; and
2. Any initial application for exemption shall become effective thirty days after the date of its filing.

(w) Child Care. The sale of child care services is exempt.

(x) Public Transportation. Fees for public transportation are exempt if agency providing public transportation qualifies under (v) Government-Funded Agencies.

(y) Exemption for retired persons who have reached the age of sixty-five.

(A). Any retired person, sixty-five years of age or older, who is a resident of the State of Alaska, may apply for and be issued by the Finance Director a senior citizen sales tax exemption card which entitles the cardholder and the cardholder's spouse to be exempt from sale tax for the purchase of goods, services or rentals which are solely for the personal use or consumption of the cardholder or the cardholder's spouse. This exemption does not apply for purchases for the cardholder or the cardholder's spouse business venture(s), including but not limited to commercial fishing.

(B) Definitions.

1. To be considered "retired" under this section, both the applicant and spouse must be substantially out of the labor force or, if still working nearly full time, the pay received must be at a reduced rate from what the person earned previously.
2. As used in this section, "resident of the State of Alaska" means a person who is physically present in the state with the intent to remain in the State indefinitely and to make a home in the State.

(C) Verification.

1. The applicant, at the time of application for a senior citizen sales tax exemption card, will provide a minimum of two pieces of identification to prove Alaska residency. One of the identification documents must show birth date.
2. The applicant shall fill out a formal application which will include a verification of their "intent to reside in Alaska."

(D) No seller shall charge or collect a sales tax on such a sale from any person who displays to the seller at the time of sale such a valid registration card unless the seller knows or has reason to know that the card is being presented in violation of this section.

(E) A seller shall keep a record on any and all such exempt sales and shall submit

to the municipality quarterly totals of such sales. A seller shall pay the sales tax on any such sale otherwise exempt but for which such exemption record has not been thus kept and submitted.

- (F) No person who has duly applied for and received such a registration card may use it to obtain such tax exemption unless the purchased item is used or consumed by the person duly holding such registration card or his or her spouse.
- (G) Violation of this section is a misdemeanor punishable by a fine of not more than three hundred dollars(\$300) or by imprisonment for not more than thirty(30) days or by both, additionally, the court may order that a registration card which has been used in a violation shall be surrendered to the court, which, in turn, shall return the card to the Finance Director for cancellation and destruction. A person who has his or her tax exemption registration card thus canceled and destroyed shall not, for period of no less than one year after the court determination of violation, be eligible to apply for or receive a new tax exemption registration card.
- (H) A resident at least sixty(60) years old, who otherwise qualifies for the exemption, and is the widow or widower of a person who qualified for the exemption under subsection A of this section, may apply for and be issued a senior citizen sales tax exemption card.

4.09.110 Residence construction tax refund.

Upon proper application the City and Borough will refund sales tax paid on the construction of an owner-occupied single-family dwelling or duplex.

- (A) The dwelling must be a new dwelling unit, not merely an extension of an existing unit. Construction must have begun and a building permit secured after April 22, 1980.
- (B) At the time of refund application applicant must be residing in the dwelling, the dwelling must be certified ready for occupancy by the Building Official and less than one year shall have passed since the issuance of the building permit. No refund shall be made for items purchased prior to the issuance of the building permit. No sales tax paid to businesses outside of the City and Borough shall be refunded.
- (C) The refund shall be the amount of sales tax actually paid for materials and services used in the construction of the dwelling. This shall include lumber, building materials, electrical and plumbing supplies or services, furnace and other heating apparatus and permanent carpeting and major appliances, such as kitchen stove, refrigerator, washer, dryer and freezer. Items not included are throw rugs, televisions, furniture, drapery, pictures and minor appliances, not built into the building. Also not included are tools and machinery purchased to use in the construction of the dwelling, nor shall it include spare material(s) not used.

- (D) Upon application for a refund the applicant shall certify, under penalty of perjury:
1. The sales tax requested to be refunded has actually already been paid to the supplier;
 2. That all items for which a refund is requested were consumed in the construction of the dwelling or have actually been installed in the dwelling.
- (E) Applications for refund shall be made to the Finance Director and shall be supported by detailed invoices. The Finance Director will disallow unsupported application or portions thereof. Appeals may be made to the Assembly.

4.09.120 Exemption from Seasonal Sales Tax Increase.

The following retail sales are exempt from any increase in the sales tax imposed on a seasonal basis, including the one percentage point increase for the months of April, May, June, July, August, and September set out in Section 4.09.010(b):

- (A) Rentals of Real Property. Rent paid as consideration for the use of real property either for thirty or more consecutive days or an entire calendar month by a person or persons of a room, set of rooms, structure, or suite is exempt from the additional one percent increase for the months of April, May, June, July, August and September. This exemption does not apply to any transaction taxable under the hotel, motel, and bed and breakfast transient room tax set out in SGC 4.24.

4.09.210 Exempt sales.

All exempt sales under SGC 4.09.100(a) - 4.09.100(y) must be documented in an invoice. The City and Borough of Sitka shall prescribe on a form issued by the Finance Director the requirement for an invoice.

4.09.220 Exempt certificate; form.

- (a) The City and Borough of Sitka shall provide for a uniform exemption certificate. A purchaser shall use the certificate when purchasing goods, or services for resale or for other exempt transactions.
- (b) The certificate must include
- (1) the general character of property or service sold by the purchaser in the regular course of business;
 - (2) the name and address of the purchaser; and
 - (3) the signature or electronic signature of the purchaser.

4.09.230 Exemption certificate; requirements.

- (a) An exemption certificate executed by a purchaser or lessee must be in the possession

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of the purchaser or lessee at the time that an exempt transaction occurs.

- (b) An exemption certificate must contain the information and be in a format prescribed by the City and Borough of Sitka.
- (c) If the seller or lessor accepts an exemption certificate and believes in good faith that the purchaser or lessee will employ the property or service transferred in an exempt manner, the properly executed exemption certificate is considered conclusive evidence, as to the seller or lessor, that the sale is exempt.

4.09.240 Improper use of subject of purchase obtained with exemption certificate; penalty.

- (a) If a purchaser who uses an exemption certificate uses the subject of the purchase for a purpose other than one allowed as exempt under this chapter, the sale is considered a taxable sale as of the time of first use by the purchaser, and the sales price is the price that the purchaser paid. If the sole nonexempt use is rental while holding for sale, the purchaser shall include in the sales price the amount of the rental charged. Upon subsequent sale of the property, the seller shall include the entire amount of the sales price, without deduction of amounts previously received as rentals.
- (b) A person who uses an exemption certificate for property that will be used for purposes other than the purpose claimed is subject to a penalty, payable to the City and Borough of Sitka, of \$100 or 100 percent of the tax due, whichever is greater, for each transaction in which an improper use of a certificate has occurred.

4.09.250 Liability for payment of tax; security for retailer without place of business; penalty.

- (a) Liability for the payment of the sales tax is not extinguished until the taxes have been paid to the department.
- (b) A retailer who does not maintain an office or other place of business in the City and Borough of Sitka is liable for the sales tax on all property sold or leased and services provided in the City and Borough of Sitka in accordance with this chapter and may be required to furnish adequate security to ensure collection and payment of the taxes. When authorized and except as otherwise provided in this chapter, the retailer is liable for the taxes on all property sold and services provided in the City and Borough of Sitka in the same manner as a retailer who maintains an office or other place of business in the City and Borough of Sitka.

4.09.260 Method of accounting.

A person shall report and pay the sales tax using the same method of accounting that the person uses for federal tax purposes.

4.09.270 Returns: payment; authority of City and Borough of Sitka.

- (a) A person who has a tax liability under SGC 4.09.010 shall file a return on a form or in

a format prescribed by the City and Borough of Sitka and pay the tax due quarterly. The return shall be filed and the tax paid on or before the last day following the end of the quarter for which the tax is due. Each person engaged in business in the City and Borough of Sitka is subject to taxation under SGC 4.09.010 shall file a return in accordance with the following:

- (1) Quarterly. Unless as otherwise provided for in this section, sellers shall on or before the last day of the month succeeding the end of each quarter year ending March 31st, June 30th, September 30th, and December 31st, prepare a return for the preceding quarter year. Returns shall be filed personally, with the Finance Department by 4:45 p.m. or postmarked on the last day of the month following the end of each quarter year. In the event the last day of the month falls on a legal holiday, Saturday, or Sunday, then the return may be filed on the first business day following;
 - (2) Monthly. If a seller fails to file or is late in filing returns for two of the last four quarters, the Finance Director will require the seller to submit returns and payment each month;
 - (3) Yearly. If a seller submits within the dates required for the four quarterly returns for a calendar year and the total amount collected and remitted to the City and Borough of Sitka is \$200 or less, seller may request in writing to the Finance Director, to file a sales tax return once a year for the previous calendar year. The yearly sales tax return is due on January 31st of each year. If total sales tax collected and/or remitted to the City and Borough of Sitka exceeds \$200, seller will be required to file quarterly sales tax returns for future sales. If seller fails to file yearly sales tax return by due date, seller will be required to file and remit sales tax quarterly. If the seller fails to file yearly sales tax return and the amount of sales tax collected during the period of the return exceeds \$500, seller will be required to submit sales tax returns and remit sales tax to the City and Borough of Sitka monthly for a minimum of one year.
 - (4) Itinerant Seller. A person doing business within the City and Borough of Sitka and liable for an itinerant nonresident business license on less than an annual basis shall file a sales tax return and remit in full the tax shown as due within twenty-four hours following the expiration of his license, but in any event prior to leaving the City and Borough of Sitka.
 - (5) Filing to be Continuous. A person who has filed a sales tax return will be presumed to be making sales in successive quarters unless the person files a return showing termination or sale of their business.
- (b) For the purposes of the sales tax, a return must be filed by a retailer required to collect the tax.
- (c) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

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4.09.280 Form of return.

On forms furnished by the City and Borough of Sitka, the seller shall furnish the following information, sign the form and certify that it correctly states the information purportedly set forth:

- (a) Total sale divided into the following categories:
 - (1) Retail and Wholesale Sales,
 - (2) Services rendered, including materials,
 - (3) Rentals of property or equipment;
- (b) All exemptions listed in SGC 4.09.100 will be listed on the form separately by exemption category;
- (c) The amount of any refund which the seller wishes to claim for tax paid on purchases made for resale and attachment of "Application for Sales Tax Refund" forms indicating payment of the amount;
- (d) The amount of tax due;
- (e) Such other information as may be reasonably required;
- (f) Sales tax forms and their contents shall be confidential and shall not be disclosed by the Finance Department except:
 - (1) In connection with efforts by the City and Borough of Sitka to collect the tax; except that lists of delinquent sales tax payers shall not be made public until suit has been brought or the delinquency is over six months and the taxpayer has not controverted the claim;
 - (2) In response to a subpoena issued by a court of record, state agency or board;
 - (3) In connection with legislative inquiry specifically authorized by the Assembly;
 - (4) In connection with the City and Borough of Sitka audits for purposes of verifying City and Borough of Sitka accounting practices;
 - (5) In compilation of statistics and studies by the Finance Department for public distribution, so long as information from individual businesses is not identifiable as to source.

4.09.290 Substantiation of sales and exemptions.

The seller shall maintain records that will substantiate all amounts listed on the returns filed with the City and Borough in include the following information needed by line item:

- (a) Gross receipts should at a minimum provide documentation for the following sales:
 - (1) Retail and wholesale sales,
 - (2) Services rendered, including materials,
 - (3) Rentals of property or equipment;
- (b) A substantiation of sales exempt under SGC 4.09.100(m) "Outside City and Borough of Sitka" by a listing of:
 - (1) The amount of sales or group of similar sale,
 - (2) The means by which the order was received,
 - (3) The point to which the sale was delivered,
 - (4) The means of transportation used for delivery of the goods;

- (c) A substantiation of sales exempt under SGC 4.09.100(g) "Governmental Agencies;"
- (d) A substantiation of sales exempt under SGC 4.09.100(p) "Resale;"
- (e) A substantiation of the balance of all retail sales claimed exempt under SGC 4.09.100(n) "Over One Thousand Dollars (\$1,000) on Sales and Rents of Tangible Personal Property and on Sales of Services, and Over One thousand dollars (\$1,000) in Rent or Lease of Real Property on a Monthly Basis" by a listing of each sale and the amount of each which was not taxable;
- (f) A substantiation of sales exempt from the tax under SGC 4.09.100(y) "Special exemption for retired persons who have reached the age of sixty-five" that lists:
 - (1) Senior exemption number provided by the City and Borough of Sitka to the senior citizen,
 - (2) Name of senior citizen;
- (g) A substantiation of all other sales claimed exempt by documenting each exemption separately.

4.09.300 Methods.

- (a) The City and Borough of Sitka shall adopt regulations providing for payment of the sales tax based on a rounding method.
- (b) The City and Borough of Sitka may use sampling principles or methods in lieu of 100 percent examination of records in conducting a sales tax audit.

4.09.310 Deduction for bad debts.

- (a) A person filing a return under SGC 4.09.280 may deduct sales found to be worthless. The bad debt may be deducted when it
 - (1) is written off as uncollectible in the person's books and records; and
 - (2) qualifies as a deduction for federal income tax purposes under 26 U.S.C. (Internal Revenue Code).
- (b) If the amount of bad debt exceeds the amount of taxable sales during the period that the bad debt is written off, a person may file a refund claim with the City and Borough of Sitka.
- (c) If a bad debt deducted under (a) of this section is subsequently collected, the person who claimed the deduction shall pay the tax levied under SGC 4.09.010 on the amount collected. For purposes of this subsection, any payments made on a debt or account are applied
 - (1) first to the taxable price of the property or service and the tax levied under SGC 4.09.010 on the property or service, then
 - (2) to interest, service charges, and any other charges.
- (d) A person filing a return under SGC 4.09.280 may deduct any bad debt that occurred after January 1, 1999 through December 31, 2003 on any return due during the 2004 calendar year. Bad debts that occur during the 2004 calendar year may be deducted on the first quarter return in 2005 and there after each first quarter return will be used to declare the previous years bad debts.

4.09.320 Timely filing allowance.

- (a) A person filing a return under SGC 4.09.270 may claim an allowance in the amount of three percent of the tax determined to be payable to the City and Borough of Sitka or \$100 a quarter, whichever is less, if the return is timely filed and the tax is timely paid provided:
- (1) The person remits within the first fifteen days of the second month of the quarter the actual tax collected during the first month of the quarter or one-third of the total tax remitted during the previous quarter(or, if seasonal fluctuations in gross business receipts exist, not less than one-third of the total tax remitted during the same quarter of the previous year); and
 - (2) The person remits within the first fifteen days of the third month of the quarter the actual tax collected during the second month of the quarter or one-third of the total tax remitted during the previous quarter(or, if seasonal fluctuations in gross business receipts exist, not less than one-third of the total tax remitted during the same quarter of the previous year); and
 - (3) The person files a return and remits the balance of the tax due as required in SGC 4.09.270.
- (b) The allowance may be deducted on the return. The allowance may not be greater than the tax determined to be payable to the City and Borough of Sitka.

4.09.330 Security: limitations; sales of security deposit at auction; bond.

- (a) The City and Borough of Sitka may require a retailer to deposit with the City and Borough of Sitka security in a form and amount that the City and Borough of Sitka determines is appropriate. The deposit may not be more than twice the estimated average liability for the period for which the return is required to be filed or \$10,000, whichever is less. The amount of security may be increased or decreased by the City and Borough of Sitka, subject to the limitations provided in this section.
- (b) If necessary, the City and Borough of Sitka may sell at public auction property deposited as security to recover a sales tax or use tax amount required to be collected, including interest and penalties. Notice of the sale must be served personally on or sent by certified mail to the person who deposited the security. After the sale, any surplus above the amount due that is not required as security under this section must be returned to the person who deposited the security.
- (c) In lieu of security, the City and Borough of Sitka will require a retailer to file a bond issued by a surety company authorized to transact business in the State of Alaska to guarantee solvency and responsibility if such retailer failed to remit sales tax on a previous business to the City and Borough of Sitka.
- (d) In addition to the other requirements of this section, the City and Borough of Sitka will require the corporate officers, directors, or shareholders of a corporation to

provide a personal guaranty and assumption of liability for the payment of the tax due under this chapter.

- (e) Appeals made be made to the Assembly on the requirement to file a bond issued by a surety company.

4.09.340 Taxpayer quitting business; liability of successor.

- (a) All taxes payable under this chapter are due and payable immediately whenever a taxpayer quits business, sells, exchanges, or otherwise disposes of the business or disposes of the stock of goods. The taxpayer shall make a return and pay the taxes due within 10 days after the taxpayer quits business, sells, exchanges, or otherwise disposes of the business or disposes of the stock of goods.
- (b) Except as provided in (d) of this section, a person who become a successor in the taxpayer's business or stock of goods is liable for the full amount of the tax and shall withhold from the sales price payable to the taxpayer a sum sufficient to pay any tax due until the taxpayer produces either a receipt from the City and Borough of Sitka showing payment in full of any tax due or a statement from the City and Borough of Sitka that tax is not due.
- (c) If a tax is due but has not been paid as provided in (a) of this section, the successor is liable for the payment of the full amount of tax. The payment of the tax by the successor is considered to be a payment on the sales price and , if the payment is greater in amount than the sales price, the amount of the difference becomes a debt due to the successor from the taxpayer owing the tax under (a) of this section.
- (d) A successor is not liable for any tax due from the person from who the successor acquired a business or stock of goods if
- (1) the successor gives written notice to the City and Borough of Sitka of the acquisition; and
 - (2) an assessment is not issued by the City and Borough of Sitka against the former operator of the business within three months after receipt of the notice from the successor. If an assessment is issued by the City and Borough of Sitka and a copy of the assessment is not mailed to the successor, the successor is not liable for the tax due.

4.09.350 Procedures on delinquencies.

- (a) Penalty and Interest will be assessed as follows:
- (1) If the seller does not file the proper forms and or remit the sales tax then due on the dates listed in SGC 4.09.270, a penalty equal to five percent of the delinquent tax, but in no event less than fifteen dollars, shall be added to the tax for the first month or any part thereof, and an additional five percent shall be added to the tax due for each month or fraction thereof for delinquency until a total penalty of twenty-five percent has accrued. It shall be assessed and collected in the same manner as the tax is assessed

and collected. The minimum penalty amount for the second month will be twenty-five dollars. The minimum penalty amount for the third month will be fifty dollars and the minimum penalty amount for the failure to file the proper forms and or remit the sales tax after ninety (90) days after due date will be one hundred dollars.

- (2) In addition to the penalty provided in subdivision (1) of this subsection, interest at the rate of twelve percent per year on the delinquent tax from the date of delinquency until paid shall accrue and be collected in the same manner as the delinquent tax is collected.
- (b) **Written Demand and Additional Procedures.** If a seller fails to file the return or make the remittance in accordance with SGC 4.09.270, the Finance Director shall make written demand upon the seller, mailed to his last known address, for submission of the return and/or remittance. In the event of noncompliance with the demand, the Finance Director may do any or all of the following actions:
- (1) **Criminal Action.** File a criminal complaint against the seller in the district court for violation of SGC 4.09.270;
 - (2) **Civil Action.** Make a sale tax assessment against the seller, with the assessment based upon an estimate of the gross revenue received by the seller during the period and institute civil action to recover the amount of the tax. The estimate of gross revenue shall be derived from past returns of the seller, the general economic level on the business community and, if available, returns of comparable businesses;
 - (3) **Hearing.** Notify the seller in writing by certified mail that a hearing will be held to determine the sales tax liability of the seller at a specified time and place not less than fifteen days after the date of the notice. The seller shall present himself at the hearing and make available for inspection his books, papers, records, and other memoranda pertaining to gross revenues derived from his commercial transactions sufficient to enable the City and Borough of Sitka to make a determination whether the return is required or tax due;
 - (4) **Publish.** Publish in a newspaper of general circulation within the City and Borough of Sitka the name and amount of sales tax due, if any, of a person convicted of the crime of violating this chapter or a person against whom the City and Borough of Sitka has recovered a judgment for unpaid sales tax.
- (c) **Waiver of Penalties.** The Administrator shall waive the penalties on failure to submit tax returns if:
- (1) The seller submits a written request to the Administrator;
 - (2) The submitted returns have no taxable sales and no taxable events under the bed tax set out in SGC 4.24; and
 - (3) The Finance Director verifies that the seller has never filed a tax return regarding sales tax or bed tax with the City and Borough of Sitka.

4.09.360 Tax as debt.

- (a) The tax imposed by this chapter and related interest and penalties become a personal debt of the person required to file a return from the time the liability arises, regardless of when the time for payment of the liability occurs.
- (b) If the personal representative of an estate has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the taxes, interest, and penalties, the personal representative is personally liable for any deficiency, to the extent permitted under AS 13.16.
- (c) This section applies to corporate officers, directors, or shareholders required by the City and Borough of Sitka to personally guarantee the payment of the taxes for their corporation. The officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay to the City and Borough of Sitka the taxes imposed by this chapter and who fails to pay the taxes is liable to the City and Borough of Sitka for the taxes imposed by this chapter and the penalty and interest due on the taxes.

4.09.370 Refunds and credits.

The City and Borough of Sitka may credit or refund overpayments of taxes, taxes erroneously or illegally assessed or collected, penalties collected without authority, and taxes that are found unjustly assessed or excessive in amount, or otherwise wrongfully collected. The City and Borough of Sitka shall set limitations, specify the manner in which claims for credits or refunds are made, and give notice of allowance or disallowance. When a refund is allowed to a taxpayer, it shall be paid out of the general fund on a warrant issued under a voucher approved by the City and Borough of Sitka.

4.09.380 Period of limitation.

The amount of any tax imposed under this chapter may be determined and assessed at any time within a period of six years after the tax became due and payable. The period shall begin on the date when a return is required to be filed. Where no return has been filed, then the period does not begin to run until the discovery of the delinquency occurs. No suit or other proceeding for the collection of the tax shall be begun after the expiration of the period.

4.09.390 Taxes lien.

The tax, interest and penalty imposed under this chapter shall constitute a lien in favor of the City and Borough of Sitka upon all property of the person owing the tax. This lien arises upon delinquency and continues until the liability is satisfied or the lien is foreclosed. When recorded, the lien authorized under this section shall have priority over all other liens, except those for property taxes and special assessments.

4.09.400 Rules and regulations.

The Finance Director shall from time to time cause to be promulgated rules and

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regulations as are necessary and advisable to provide for the application and interpretation of this chapter and to submit them to the Assembly for its adoption or rejection, and to cause to be provided methods and forms for reporting and collecting the tax in accordance with this chapter and regulations.

4.09.410 Sales tax audits.

- (a) Any seller who has established a sales tax account with the City and Borough of Sitka, who is required to collect and remit sales tax, or who is required to submit a sales tax return under the provision of SGC 4.09.270 is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the seller in order to determine whether appropriate amounts of sales tax revenue have been collected by the seller and remitted to the City and Borough of Sitka.
- (b) The Finance Director shall be responsible for directing that sales tax audits take place and for selecting the particular sellers whose business records will be audited.
- (c) Sales tax audits of seller's business records may be accomplished by either an employee of the City and Borough of Sitka's Finance Department or by an individual or firm under contract with the City and Borough of Sitka.
- (d) Sellers selected for a sales tax audit will be notified by letter and will be required to meet with, and make available for inspection and copying all pertinent business records including income tax returns that may be requested for the prior six fiscal years for examination, to the Finance Department employee, or contractor conducting the audit, within thirty days of notification. Under extenuating circumstances, the Finance Director may grant an extension of time for compliance at the Director's discretion.
- (e) After completion of a sales tax audit, sellers subject to the audit will be notified of the results of the audit by letter. If the audit has resulted in an additional sales tax liability to the City and Borough of Sitka, the additional sales tax must be remitted to the City and Borough of Sitka within fourteen days after the receipt of the letter, or the additional sales tax will be considered delinquent and subject to the procedures on delinquencies outlined in SGC 4.09.350. If the audit has resulted in a refund due the seller, the refund will be sent to the seller within fourteen days, or applied to the seller's account, at the seller's option.
- (f) It shall be the seller's responsibility to maintain business records in sufficient detail to substantiate all information reported on sales tax returns, including sales qualifying as retail sales exempt from taxation under the provision of SGC 4.09.100. If insufficient detail exists within a seller's business records to substantiate retail sales exemptions, such sales will be reclassified as taxable sales and subject to sales tax collection and remittance.
- (g) Any seller notified of an additional sales tax liability as a result of a sales tax audit shall have the right to appeal the additional liability to the Assembly. Such an appeal must be filed with the Municipal Clerk within thirty days of notification by

letter of the liability. If an additional liability is appealed, the accumulation of penalties and interest under the provisions of SGC 4.09.350 will be suspended on the date the appeal is filed with the Municipal Clerk; if the appeal is subsequently denied by the Assembly, all such penalties and interest will be retroactive back to the original date of notification of additional liability by letter.

- (h) Any seller refusing to comply with the provisions of this section shall be subject to any or all of the procedures on delinquencies as outlined in SGC 4.09.350, including the filing of a criminal complaint against the seller in district court.

4.09.420 Definitions.

In this chapter,

- (1) "consideration" means a valuable inducement and includes, without limitation, money, property, and services;
- (2) "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;
- (3) "lease," "leasing," or "rental," regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, 26 U.S.C. (Internal Revenue Code), AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), or other provisions of federal, state, or local law,
 - (A) means a transfer of possession or control of tangible personal property of a fixed or indeterminate term for consideration; a lease or rental may include future options to purchase or extend;
 - (B) does not include
 - (i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
 - (ii) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments if payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or
 - (iii) providing tangible personal property along with an operator for a fixed or indeterminate period of time; a condition of this exclusion is that the operator is necessary for the equipment to perform as designed; for the purpose of this sub-subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property;
 - (C) includes agreements covering motor vehicles and trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701 (h)(1);
- (4) "maintaining an office or other place of business" means
 - (A) a person's having or maintaining in the City and Borough of Sitka, directly or

by an affiliate, an office, distribution house, sales house, warehouse, or place of business; or

(B) an agent's operating within the City and Borough of Sitka under the authority of the person or its affiliate, whether the place of business or agent is located in the City and Borough of Sitka permanently or temporarily or whether the person or affiliate is authorized to do business in the City and Borough of Sitka;

(5) "manufacturing" means combining or processing components or materials, including the processing of ores in a mill, smelter, refinery, or reduction facility, to increase the value of the components or materials for sale in the ordinary course of business; "manufacturing" does not include construction;

(6) "permit" or "seller's permit" means a seller's permit as described in SGC 4.09.550;

(7) "person" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity, including a gas, water, or electric utility owned or operated by a borough, municipality, or other political subdivision of the state;

(8) "purchase price" means "sales price" and applies to the measure subject to sales tax;

(9) "sale," "selling," or "purchasing" means the transfer of property for consideration or the performance of a service for consideration;

(10) "sales price"

(A) means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) the seller's cost of the property sold;

(ii) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) delivery charges;

(v) installation charges;

(vi) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;

(vii) credit for a trade-in, as determined by state law;

(B) does not include

(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately

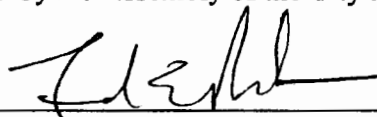
stated on the invoice, bill of sale, or similar document given to the purchaser;

- (11) "sales tax" means the applicable tax imposed by SGC 4.09.010;
- (12) "service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property; in determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant; "service" includes
 - (A) activities performed by a person for its members or shareholders;
 - (B) construction activities and all tangible personal property that will become an ingredient or component part of a construction project; and
 - (C) labor; professional services; transportation; telephone or other communications service; entertainment, including cable, subscription, or pay television or other telecommunications service; the supplying of food, lodging; or other accommodations in hotels, restaurants, or elsewhere; admission to exhibitions; the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network; and the supplying of equipment for use;
- (13) "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; "tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;
- (14) "tax" means the tax levied by SGC 4.09.010;

5. **EFFECTIVE DATE.** This ordinance shall become effective April 1, 2004.

6. **INTENT OF THE ASSEMBLY.** It is the intent of the Assembly that if the voters approve a Charter amendment at regular election in October of 2004 allowing the Assembly to raise the property tax levy to seven mills from the current limit of six mills, the Assembly will adopt an ordinance effective April 1, 2005 providing that that portion of the selling price for a single piece of equipment or tangible personal property or sale unit in excess of one thousand dollars (\$1,000) is exempt.

PASSED, APPROVED AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 23rd day of March, 2004.



Fred Reeder, Mayor

ATTEST:



Colleen Pellett, CMC
Municipal Clerk

Colleen Ingman

From: Mim McConnell
Sent: Saturday, February 08, 2014 12:27 PM
To: Robin Koutchak
Cc: Mark Gorman; Colleen Ingman; Phyllis Hackett
Subject: Fine Arts Camp and Sales Tax charges

Hi Robin,

I received a phone call from Sue Litman today in reference to a question/concern about campers other than Fine Arts Campers maybe having to pay the bed and sales tax. There seemed to be some question in the tax department about this and it sounds like maybe you have been approached by them for clarification. I believe the intent of the ordinance (#?) was to exempt all students for any camp. If this ordinance needs to be changed to reflect that intent I would be interested in co-sponsoring the ordinance. I've included Phyllis as she was on the assembly at that time and may remember this issue and may also want to co-sponsor this.

Thanks!

Mim

Mim McConnell, Mayor
City and Borough of Sitka
100 Lincoln Street
Sitka, AK 99835
907-747-2860 (p/f) 907-738-2888 (c)
www.cityofsitka.com
Coast Guard City, USA

-----NOTE: THIS EMAIL IS FOR INFORMATIONAL PURPOSES ONLY. IN ORDER TO AVOID ANY POSSIBLE OPEN MEETING ACT (OMA) VIOLATIONS, PLEASE DO NOT RESPOND TO THIS EMAIL, OR DISCUSS INFORMATION SUBJECT TO OMA WITH OTHER MEMBERS OF THE ASSEMBLY EXCEPT AS ALLOWED BY LAW. IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE OR ANY OMA IMPACTS, PLEASE CONTACT THE MUNICIPAL ATTORNEY AT 747-1879 OR THE MUNICIPAL CLERK AT 747-1811.