

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 sale of advertising in conjunction with internet websites.

Sale of Advertising in Conjunction with Internet Web Sites

Sales Tax Interpretation

Issue: A citizen has requested a written ruling backed by statutory quotation of why he should continue to collect Sitka sales tax on the advertisement costs paid by his customers in association with his website. The web site is exclusively devoted to advertising and promoting Sitka, its news, history, events, and classified advertisements from Sitka businesses.

Accordingly, does the sale of advertisements to be included on internet websites constitute a taxable sale under Chapter 4.09 of the Sitka General Code, and, must a seller who is engaging in the business of selling advertisements to individuals and businesses to be placed on the web site, collect and remit sales tax (unless exempted by another exemption)?

Technical Issues to be resolved:

1. Where does the sales transaction take place? Or in other words, if the purchaser of the advertising is outside of the City and Borough of Sitka but the order is received within the City and Borough, is the sale considered to be transacted inside or outside City and Borough? Vice versa, if the purchaser of the advertisement is in Sitka but the order is received outside the City and Borough, is the sale considered to be transacted inside or outside City and Borough?
2. Where does the delivery of the tangible product (the advertisement) take place? Or in other words, is delivery considered to be the point wherein the website developer completed the programming required to place the advertisement on the web site, or, is it considered delivered wherever advertisement is read by the customer who placed the order?

Pertinent sections of Sitka General Code applicable to issue:

1. SGC Section 4.09.101 states: "There is levied a consumer's sales tax on sales, rentals, and leases made within 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; 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.
2. SGC Section 4.09.420 M defines tangible personal property as "personal property which can be seen, weighed, measured, felt, touched, or that in any way is perceptible to the senses".
3. SGC Section 4.09.430 states a broad policy on the overall presumption of taxability. SGC 4.09.430 A (1) and (2) state "In order to prevent evasion of the sales tax and to aid in its administration, (1) all sales by a person engaging in business are subject to 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.

4. SGC 4.09.100 M states “sales of goods or services received from outside the city 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 is exempt”.

Discussion and Logical Analysis:

1. A key premise set forth in SGC 4.09.030 is that all sales in Sitka are presumed to be subject to sales tax unless specifically exempted from sales tax. This means that unless business transaction does not meet the definition of a sale, or a specific exemption exempts the transaction from taxation (or exempts the purchaser from having to collect tax or the purchaser from having to pay tax), then the transaction is subject to sales tax.
2. Thus, the sale of advertising for inclusion on an internet web site is presumed to be taxable unless (1) it does not meet the definition of a sale, or (2) the sale is determined to not be in Sitka, or (3) some specific exemption exempts the transaction from taxability.
3. SGC 4.09.420 defines a sale as “the transfer of property for consideration”. As already stated, SGC 4.09.420 M includes personal property which is visible to the senses as tangible personal property, thus sales of advertising meet the statutory definition of sale of property.
4. The web site lists two methods for contact: an email address, and, a cellular telephone number. No physical address for the web site is provided on the web page. The Alaska business license for the owner indicates a Douglass, Alaska address.
5. In order to meet exemption SGC 4.09.100 M, two things must occur: (1) the order must be placed from outside the City and Borough, and (2) the property must be delivered outside the City and Borough. Any calls or orders from Sitka businesses are placed from inside Sitka, and, thus meet criteria (1). Criteria (2) is more opaque, as it is arguable where (exactly) internet-based advertisements are considered delivered. To answer this question, I revert back to the overall presumption of taxability: *(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.* This broad presumption of taxability meets criteria 2.

Interpretative Ruling

In accordance with SGC 4.09.400, I hereby interpret Chapter 4.09 of the Sitka General Code to determine that sales of advertising on internet-based web sites are subject to sales tax if the order is for the advertisement is places from within Sitka, as delivery of the advertisement is presumed to be sold for a taxable use within the City and Borough of Sitka and delivery takes place at the Sitka business location of the advertiser. This interpretation shall be sent to the Sitka Assembly for adoption or rejection and shall be considered to be binding until such time as formally adopted or rejected by the Assembly.

June 18, 2019

John P. Sweeney III
Chief Finance and Administrative Officer