



CITY OF WASILLA

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COUNCIL MEMORANDUM NO. 93-117

FROM: Finance 

DATE: December 8, 1993

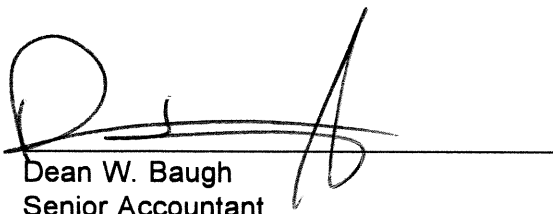
SUBJECT: Ordinance 93-59, Amendments to Sales Tax Code 6.50

Per council direction and complying with the Supreme court decision in Dilley vs. Ketchikan. We are submitting a proposal to amend the Sales tax Code with regard to taxing charitable gaming based on the ideal net.

We are also proposing some amendment to the enforcement procedures in the Sales Tax Code. These changes were drawn from the Sales Tax code which was presented by the Borough. The drafting of their code provided some improvements over our existing code. The boroughs enforcement procedures were drafted by the borough, City of Wasilla and the City of Palmers attorneys.

The last part of this proposed amendment deals with Section 6.50.230B of the Sales Tax Code. This section was amended last year to clarify the property tax procedures used by the City of Wasilla. That amendment was specific to calendar year 1993, this amendment assures that Section 6.50.230B is applicable to all subsequent calendar years.

Finance respectfully request that Council introduce Ordinance No. 93-58 for public hearing January 10, 1994 and consideration at your January 24, 1994 meeting.


Dean W. Baugh
Senior Accountant

Council 110

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LAW OFFICE
OF
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M E M O R A N D U M

RECEIVED

JAN 3 - 1994

City of Wasilla, Alaska

TO: Mayor John Stein and City Council Members

FROM: Richard Deuser, City Attorney

RE: Allocation of Sales Tax Between Services
Performed Within and Outside City Limits

DATE: January 3, 1994

The issue has arisen as to whether or not the sales tax can be amended so as to eliminate competitive differences between businesses performing services inside the City as against businesses performing services outside the City. More particularly, the example of laundry cleaning services has been raised. The laundry service that accepts customer clothing within the City and which also performs its cleaning services within the City taxes the entire transaction price. By contrast, a laundry service that merely accepts clothing within the City, but performs the actual cleaning service outside of the City, again returning the clothing for return to the customer at its store within the City, is currently allocating the tax to that portion of its transaction price related to the services performed within the City as compared to that portion of the transaction price related to activities outside the City.

ANALYSIS

The important point to first distinguish is the difference between taxation of goods as compared to taxation of services. Although a lengthy explanation could be offered, goods bought and sold within the City limits are generally subject to the sales tax as long as A) the point of delivery/transaction is within the City, and B) the seller maintains sufficient contacts with the local jurisdiction so as to constitutionally authorize the taxation of that activity. E.g., following Supreme Court precedent, the current City sales tax would not tax those entities who offer their products by mail contact only, without having sales staff or an office in Wasilla. Generally speaking, except for mail-order houses, "point of delivery" is sufficient to impose the sales tax on transactions involving goods.

Services are handled differently.

State law frames the issue by noting that the sales tax is limited in application to "services provided in the [local taxing jurisdiction]." A.S. 29.45.650. The State law is consistent with constitutional principles recently articulated in Quill Corporation v. North Dakota, United States Supreme Court, decided May 26, 1992. Briefly, the United States Supreme Court noted that sales taxes, in order to be constitutional, must be premised upon a nexus between the activity and the jurisdiction imposing the tax.

To be clear, service businesses who perform services that are wholly performed within the City limits, are taxable on the full transaction price. Alternatively, a service that is performed partially within the City and partially outside the City is, by statute and by constitutional principle, expected to allocate that portion of the transaction price related to activity within the City as against that portion of the transaction price representing activity outside the City. Again, this conclusion is distinguishable if we are talking about goods, not services.

The only possible theory by which to fully tax the laundry service performed partially inside and partially outside the City, is to extend the concept of goods (as opposed to services) to include the laundry product. Put differently, in order to fully tax the entire transaction price, the City would have to argue that the delivered laundered shirt is more like delivering a product than it is like delivering a service.

CONCLUSION

Based upon the above analysis, the current administrative practice at the City of Wasilla is to permit and allow local laundry services to allocate the transaction price between that portion subject to the sales tax (activity within the City) as compared to that portion of the total transaction price that is not subject to the sales tax (activity occurring outside the City).

Sincerely,



Richard Deuser

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