

LEGAL SERVICES

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MEMORANDUM

February 19, 2024

SUBJECT: Session law repealer (SB 179; Work Order No. 33-LS1093\A)

TO: Senator Forrest Dunbar
Chair of the Senate Community & Regional Affairs Committee

FROM: Andrew Dunmire
Legislative Counsel



Section 8 of SB 179 repeals a series of session law enactments from the early 2000s. You asked why the repealer is necessary in a bill that relates to taxation of transfers of real property.

In order to draft a bill banning municipal taxes on transfers of real property, it is necessary to amend AS 29.45.650(a). This bill amends the first sentence of that subsection as follows: "Except as provided in AS 04.21.010(c), AS 29.45.750, and in (f), (h), (i), [AND] (j), (k), and (l) of this section, a borough may levy and collect a sales tax on sales, rents, and [ON] services provided in the borough."¹ As you can see, that sentence currently references AS 29.45.750, which relates to municipal taxation of mobile telecommunications services. AS 29.45.750 incorporates a federal law known as the Mobile Telecommunications Sourcing Act and declares that a municipality that taxes mobile telecommunications services "shall do so in accordance with the" federal law.²

In other words, the *state* statute that regulates telecommunication taxes relies upon a *federal* law. In 2002, when the legislature enacted AS 29.45.750, it also enacted a section of uncodified law that will repeal AS 29.45.750 "if a court of competent jurisdiction whose decisions are binding in this state enters a final judgment on the merits that is based on federal law, is no longer subject to appeal or petition for certiorari, and substantially limits or impairs the essential elements of" the federal Mobile Telecommunications Sourcing Act.³ (Basically, if a federal court declares the federal law unenforceable, the state statute will be repealed.)

¹ The reference to *(l)* is directly related to the subject matter of the bill. The reference to *(k)* is added to clean up an omission in the statute. Subsection *(k)* relates to construction contracts awarded by the state.

² AS 29.45.750(b).

³ Sec. 9, ch. 100, SLA 2002. This section was amended in 2003 and 2005, but the substance of it remains as quoted above.

If that condition is met—if the federal law is struck down by a court—then AS 29.45.750 will be automatically repealed. But, as pointed out in the beginning of this memorandum, the first sentence of AS 29.45.650(a) references AS 29.45.750. So the repeal of AS 29.45.750 would cause AS 29.45.650(a) to contain a meaningless citation (i.e., AS 29.45.650(a) would then point to a statute that doesn't exist).

The legislators in 2002 foresaw that problem, and so it proactively enacted another section of session law to deal with AS 29.45.650(a). That section is triggered by the same contingency (a federal court striking down the federal law), and if it is enacted it will amend the first sentence of AS 29.45.650(a) to read:

Except as provided in AS 04.21.010(c), and in (f), (h), (i), and (j) of this section, a borough may levy and collect a sales tax on sales, rents, and on services provided in the borough.⁴

As you can see, the function of that session law is to remove the reference to AS 29.45.750 once that statute section is repealed. But the new language would only recognize the exceptions found in subsections (f), (h), (i), and (j). So the change would delete the references to (k) and (l) from AS 29.45.650(a). In other words, the contingency that was enacted by the 2002 session law has the capacity to undo the changes that sec. 3 of SB 179 would make to AS 29.45.650(a).

So, to summarize, if a federal court strikes down the federal Mobile Telecommunications Sourcing Act, then AS 29.45.750 will be repealed, AS 29.45.650(a) will be amended, and the amendment to AS 29.45.650(a) will roll back changes made by SB 179. Therefore, if the legislature passes a bill that amends AS 29.45.650(a), then it needs to address the contingency language. Ignoring the contingency could result in a bill being invalidated by federal litigation that is unrelated to the subject matter of the bill. There are two ways to address the contingency language: either repeal it or amend it.

SB 179 repeals the contingency language. Section 8 would repeal the session law containing the contingency, so it would no longer be "on the books." That means that if a federal court ever invalidates the Mobile Telecommunications Sourcing Act, AS 29.45.750 will not be repealed.

Alternatively, the legislature could replace sec. 8 with language that amends the old session law. That option would keep the contingency "on the books," but would update the contingency language so that it does not inadvertently undo changes made to AS 29.45.650(a). That would mean that if a federal court ever invalidates the Mobile

⁴ Sec. 4, ch. 100, SLA 2002, as repealed and reenacted by sec. 2, ch. 30, SLA 2005.

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Telecommunications Sourcing Act, AS 29.45.750 will be repealed but AS 29.45.650(a) will continue to operate as the legislature intended.

Please let me know if the Senate Community & Regional Affairs Committee would like to update the session law instead of repealing it. We will be happy to draft you an amendment or committee substitute.

ASD:mjt

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