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# HOUSE COMMITTEE REPORT

(5)

Date Referred: April 23, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 5/1/90

The C&RA Committee considered:

SB 505

SENATE BILL NO. 505

MUNICIPAL SALES TAXES

"An Act relating to sales taxes levied by general law municipalities."

**RECOMMENDATIONS:**

- [ ] be replaced with \_\_\_\_\_ [ ] the same title
- [ ] have attached amendment(s) [ ] a new title
- [ ] do pass
- [ ] do not pass
- [ ] no recommendation
- [X] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [ ] fiscal impact \_\_\_\_\_
- [ ] zero fiscal note \_\_\_\_\_
- [ ] zero with analysis \_\_\_\_\_

- [ ] fiscal note(s) \_\_\_\_\_
- [X] zero fiscal note(s) C&RA
- [ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not  
Pass      No Rec      Amend

<i>Evelyn G. Kubina</i> Kubina				
<i>Richard J. Foster</i> Foster	<i>Cheri Davis</i> C. DAVIS			
	<i>Eileen P. McKeon</i> McKEON			

*Eileen P. McKeon*  
Chairman's Signature

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 13, 1990

POSITION PAPER

RE: Senate Bill 505

SPONSOR: Community and Regional Affairs Committee

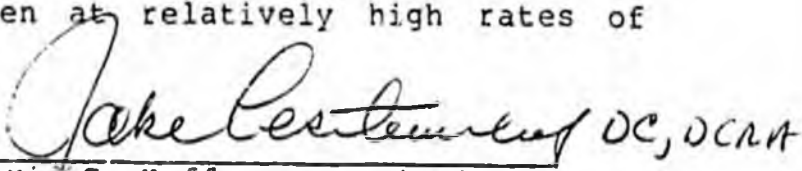
Program Effects of Bill

The major effect of this bill is to remove the existing six percent limit on sales tax rates for general law municipalities. It would also make explicit reference in Title 29 to the existing Title 4 limitation on sales taxes on alcoholic beverages. Section 2 of the bill would repeal AS 29.60.650(g) which is no longer necessary because of the repeal of the sales tax limitation in Section 1 of the bill.

Comments

The department supports passage of this bill as an expansion of municipal powers and enhancement of local governments' ability to raise revenues locally. Home rule municipalities under current law are not subject to the six percent sales tax limit. This bill provides similar treatment to general law municipalities. Any proposed increase in sales tax rates must be approved by the voters in a general law municipality under AS 29.45.670, providing a safeguard against the imposition of unreasonably high sales tax rates.

While this will provide additional flexibility to municipalities to raise revenues locally, it is not a total answer to local governmental financial problems. Particularly in smaller cities, there is simply not enough sales activity to raise significant revenues even at relatively high rates of taxation.

  
David G. Hoffman, Commissioner

- P.O. BOX B  
JUNEAU, ALASKA 99811-2100  
PHONE: (907) 485-4700
- 949 E. 36TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 563-1073

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to sales taxes levied by general law municipalities."  
Sponsor: Senate C&RA  
Requestor: \_\_\_\_\_

Agency Affected: Community & Regional Affairs  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)  
There is no fiscal effect for FY 90.

Prepared by: Jim Plasman, Deputy Director  
Division: Municipal & Regional Assistance

Phone: 465-4750

Date: 3/12/90

Approved by Commissioner: [Signature]  
Agency: Community & Regional Affairs

Date: 3-12-90

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget

Alaska  
MUNICIPAL  
League


TELEPHONE  
(907) 586-1325  
FAX 463-5480

217 SECOND STREET, SUITE 200  
JUNEAU, ALASKA 99801

March 13, 1990

MEMORANDUM

TO: Senator Mike Szymanski, Chair  
Members, Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: SB 505 - Municipal sales tax

The Alaska Municipal League supports SB 505 repealing of the limits on sales tax rates contained in Title 29 and allowing local voters to set the limits according to the public need and acceptance of taxation methods.

Because voters must approve a sales tax before it is levied, there should be no statutory limit on the rate of sales tax a municipality may impose. If the voters in a municipality desire to tax themselves at a rate higher than the 6 percent currently authorized by statute (AS 29.45.650(a)) for general law municipalities, they should be permitted to do so. Sales tax represents a significant revenue source for 89 municipalities in Alaska and accounted for \$60,559,971 in municipal revenues in 1988 (compared to \$281,960,341 in property tax revenues collected by only 25 municipalities in Alaska).

I have attached a sheet listing municipalities whose sales and use taxes approach the limit for general law municipalities.

Attachment

sab2:sb505.sales

## MUNICIPALITIES WITH 5% OR GREATER GENERAL SALES OR USE TAX

Municipality	Percentage of Sales Tax	Percentage of Other Tax	Type
City and Borough of Juneau	4	7	Hotel/Motel
City of Anderson		6	Heating fuel, phone, electricity, TV
City of Bethel	5		
City of Craig	4	6	Liquor
City of Dillingham	5		
City of Fairbanks		8	Liquor; Hotel/Motel
City of Galena	3	6	Liquor
City of Haines	5		
City of Kake	5		
City of Kenai	5		
City of Kodiak	5	5	Hotel/Motel
City of Petersburg	6	3	Hotel/Motel
City of Skagway	4	6	Hotel/Motel
City of Tenakee Springs	1	6	Hotel/Motel
City of Wrangell	6		
Haines Borough	5		
Matanuska-Susitna Borough		5	Hotel/Motel
Municipality of Anchorage		8	Hotel/Motel
North Slope Borough	6		

Source: *Alaska Municipal Officials Directory 1990*, Alaska Municipal League, Alaska Department of Community and Regional Affairs, 2/8/90.

k7/salestax

# MEMORANDUM

State of Alaska

Department of Law

TO: Marty Rutherford, Director  
Div. of Municipal & Regional Asst.  
Dept. of Community &  
Regional Affairs

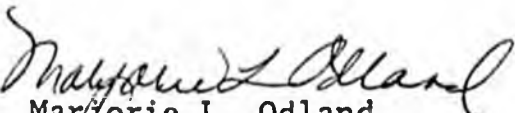
DATE: March 1, 1988

FILE NO: 663-87-0491

TEL NO: 465-3600

SUBJECT: Sales tax limitations  
when borough, and city  
within borough, both levy  
taxes

FROM:

  
Marjorie L. Odland  
Assistant Attorney General  
Governmental Affairs-Juneau

You have asked our opinion regarding several specific municipal sales tax questions stemming from an interpretation of the statutory sales and use tax provisions, AS 29.45.650 and 29.45.700. Each of the questions you have asked will be addressed individually below.

1. Does the six percent sales tax limitation on boroughs under AS 29.45.650(a) apply to cities as well?

The answer is yes. AS 29.45.700 states that a city, which is empowered to levy and collect sales and use taxes, may do so "in the manner provided for boroughs." AS 29.45.650 specifies the "manner" in which boroughs may levy and collect such taxes. This "manner" includes the setting of the maximum percentage (six percent) that can be levied and collected on sales, rents and services. It also includes the maximum interest rate that can be imposed on delinquent taxes, the method of creating, recording, and notice of a lien on property to secure payment, and requirements for imposing a use tax (e.g., use tax rate must equal sales tax rate and can only be imposed on buyers).

2. Does the six percent sales tax limitation apply to the combined tax rate for cities within boroughs or may each entity separately tax up to a rate of six percent for a potential total of twelve percent?

The applicable tax statutes do not readily provide the answer to this question. Neither AS 29.45.650 nor 29.45.700 specify a "maximum" percentage of sales tax when both a borough and a city are imposing a sales tax on the same sale. However, taken literally, a city within a borough that levies and collects area-wide sales and use taxes may do the same as the borough and a 12 percent sales tax (combined) appears to be allowed by law. This interpretation is consistent with the constitutional requirement that municipal powers are to be broadly construed. Alaska Const. art. X, § 1. Unfortunately, there is no Alaska case law on point to assist us in interpreting these statutes. And, we were unable

Marty Rutherford, Director  
DCRA -- Munic. & Reg. Asst. Div.  
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to find any legislative history on the sales and use tax statutes to provide us with any helpful insight on this particular matter. However, according to one legal treatise, it is generally held that tax laws are to be interpreted to avoid any possibility of double taxation, in any form, including taxes levied by distinct sovereignties upon the same tax basis, especially where the intention of the legislature is not clear in respect to the matter. 68 Am. Jur. 2d Sales and Use Taxes § 178 (1973).

In conclusion, a literal reading of AS 29.45.650 and 29.45.700 allows for a maximum 12 percent sales and use tax when both the borough and city within the borough levy taxes on the same sources. However, we believe that the intention of the legislature is not altogether clear on this issue and needs clarification before we can render a definitive answer.

3. Assuming a city within a borough has the power to levy a sales tax which would make the combined tax rate in excess of six percent, would the borough be able to only collect up to the six percent limit under AS 29.45.645(a)?

No. Under AS 29.35.170(b), the borough "shall" collect taxes levied by a city and must return those taxes it collects to the city, in full. See 1987 Inf. Op. Att'y General (663-88-0178; Nov. 13). The borough, of course, also collects its own sales and use taxes under AS 29.45.645(a). Therefore, assuming that a total nine percent sales tax is levied on sales in a city within a borough, with six percent imposed by the borough and three percent imposed by the city, the borough collects the entire nine percent sales tax under its authority to collect taxes on behalf of the city and gives the city its three percent and retains six percent for itself. AS 29.35.170(b).

In your memorandum, you expressed concern that there may be a conflict of tax "collection" powers between a city within a borough and the borough when the city levies sales taxes on sources not taxed by the borough. AS 29.45.700(a) allows a city within a borough to "levy" sales and use taxes on all sources taxed by the borough, but does not allow the city to collect those taxes. Those sales and use taxes are collected by the borough on behalf of the city. But, as you have pointed out in your opinion request, AS 29.45.700(a) allows cities within boroughs to levy and collect sales and use taxes "on other sources," which the borough does not tax. However, AS 29.45.700(a) also states that a city is only allowed to levy and collect these taxes if the borough assembly authorizes the city to do so by ordinance. Therefore, no conflict exists between AS 29.35.170(b) and AS 29.45.700(a), because a city within a borough can only

Marty Rutherford, Director  
DCRA -- Munic. & Reg. Asst. Div.  
663-87-0491

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levy and collect its own sales and use taxes if the taxes are:  
(1) levied on sources not taxed by the borough; and (2) the borough assembly authorizes the city to levy and collect the tax on those sources. Since the borough does not tax these "other sources," it has been given the power to delegate its tax levy and collection power to the city under AS 29.45.700(a) for this limited purpose.

We hope this addresses your questions. I apologize for the lateness in answering this opinion request.

MLO/pjg

cc: Mike Worley, State Assessor  
DCRA - Juneau

**Sec. 29.45.600. Combining property tax with incorporation of a second class city.** A petition for second class city incorporation may request that a property tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent on the passage of the property tax proposition. If so, the incorporation proposition fails if the property tax fails. (§ 12 ch 74 SLA 1985)

#### Article 4. Borough Sales and Use Tax.

##### Section

650. Sales and use tax

660. Notice of sales and use tax

##### Section

670. Referendum, adoption, and modification

**Sec. 29.45.650. Sales and use tax.** (a) Except as provided in (f) of this section, a borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services provided in the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use, or consumption of tangible personal property in the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only on buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that the person has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether inside or outside the state.

(d) If the assembly charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year on the delinquent taxes and shall be charged from the due date until paid in full. This subsection applies to home rule and general law municipalities.

(e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales and use tax, and the interest, penalties, and administration costs in the event of delinquency. When recorded, a lien authorized under this section has priority over other liens except those for property taxes and special assessments.

(f) A borough may not levy and collect a sales tax on a purchase made with food coupons, food stamps, or other type of certificate issued under 7 U.S.C. 2011 — 2025 (Food Stamp Act). This subsection applies to home rule and general law municipalities. (§ 12 ch 74 SLA 1985; am §§ 3, 4 ch 38 SLA 1986)

**Effect of amendments.** — The 1986 amendment substituted "Except as provided in (f) of this section, a" for "A" at the beginning of subsection (a) and added subsection (f).

#### NOTES TO DECISIONS

**Editor's notes.** — The cases cited in the notes below were decided under a former, similar provision.

**Evolutionary development of present language of subsection (a).** — See *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

Subsection (a) of this section permits a selective sales tax. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

This section states no limits on what may be exempted. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

And there is nothing in the statute which expressly requires a general tax. *Liberati v. Bristol Bay Borough*, Sup.

Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

The term "sales tax" carries no connotation of generality. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

The city of Homer bed tax, based upon the actual rental of a room, and imposed, computed and collected according to traditional sales tax methods, is a sales tax within the meaning of this section. *City of Homer v. Gangl*, Sup. Ct. Op. No. 2559 (File Nos. 5702, 5743), 650 P.2d 396 (1982).

A real property lien is beyond the scope of what may be "necessarily or fairly implied in or incident to" the authority to collect a sales tax. *Fairbanks N. Star Borough v. Howard*, Sup. Ct. Op. No. 2036 (File No. 4575), 608 P.2d 32 (1980).

**Collateral references.** — 68 Am. Jur. 2d, Sales and Use Taxes, § 1 et seq.

**Sec. 29.45.660. Notice of sales and use tax.** (a) If the borough levies and collects only a sales tax and use tax, the assembly shall provide a notice substantially in the form set out in AS 29.45.020. In providing notice under this subsection, the assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in AS 29.45.020. Notice shall be provided

(1) by publishing in a newspaper of general circulation in the borough a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the borough's budget; or

(2) if there is no newspaper of general circulation in the borough, by posting a copy of the notice for at least 20 days in at least two public places in the borough, with posting to occur not later than 45 days after the final adoption of the borough's budget.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.60.010 — 29.60.080 and state aid for miscellaneous municipal services under AS 29.60.100 — 29.60.180. The department shall withhold annual allocations under those sections until municipal officials demonstrate that the requirements of this section have been met. (§ 12 ch 74 SLA 1985)

CITY OF SKAGWAY  
RESOLUTION 90-6R

A RESOLUTION SUPPORTING SENATE BILL 505 IN THE LEGISLATURE OF THE STATE OF ALASKA SIXTEENTH LEGISLATURE - SECOND SESSION.

Whereas, SB 505 seeks to equalize taxing abilities for all communities within the state, and

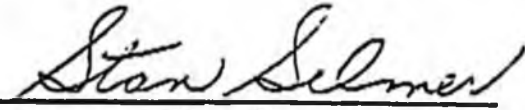
Whereas, the City of Skagway recognizes that the hotel/motel bed tax is considered a sales tax under Sec. 29.45.650, and

Whereas, Sec. 29.45.650 requires that sales tax not exceed 6%, and


Whereas, SB 505 seeks to remove the 6% restriction so that a Borough or City may increase its hotel/motel bed tax upon approval of voters.

NOW, THEREFORE, BE IT RESOLVED that the City of Skagway supports approval of Senate Bill 505 during the Second Session of the Alaska Sixteenth Legislature.

PASSED AND APPROVED THIS 5th DAY OF APRIL, 1990.

  
Stan Selmer, Mayor

ATTEST:

  
Lorene S. Gordon, City Clerk

Drafted by: Tourism Director Fuqua  
Introduced by: Councilman McBride

Municipal Taxes  
(general law muni's)

SENATE BILL NO. 505 by the Community & Regional Affairs Committee. Rewrites AS 29.45.650(a) to allow a borough to levy and collect a sales tax on sales, rents, and on services provided in the borough, except as provided in AS 04.21.010(c), relating to municipal regulation of alcoholic beverages, and AS 29.45.650(f), relating to food stamps. AS 04.21.010(c) provides:

(c) A municipality may not impose taxes on alcoholic beverages except a

- (1) property tax on alcoholic beverage inventories;
- (2) sales tax on alcoholic beverage sales if sales taxes are imposed on other sales within the municipality;
- (3) sales tax on alcoholic beverage sales that was in effect before July 1, 1985; and
- (4) sales and use tax on alcoholic beverages if the sale of alcoholic beverages within the municipality has been prohibited under AS 04.11.490.

AS 29.45.650(f) provides:

(f) A borough may not levy and collect a sales tax on a purchase made with (1) food coupons, food stamps, or other type of certificate issued under 7 U.S.C. 2011 — 2025 (Food Stamp Act); or (2) food instruments, food vouchers, or other type of certificate issued under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and Children). This subsection applies to home rule and general law municipalities.

Repeals AS 29.45.650(g), relating to cigarettes and tobacco:

(g) The limitation on the rate of levy specified in (a) of this section does not apply to taxes imposed on sales of cigarettes and tobacco products at retail. For purposes of this subsection,

- (1) "cigarette" has the meaning given in AS 43.50.170;
- (2) "tobacco product" has the meaning given in AS 43.50.390. (§ 12 ch 74 SLA 1985; am §§ 3, 4 ch 38 SLA 1986; am § 1 ch 20 SLA 1987; am § 2 ch 30 SLA 1988; am §§ 1, 2 ch 96 SLA 1989)

If enacted, the bill becomes law 90 days after it is signed by the Governor.

Introduced February 22, 1990 and referred to Community & Regional Affairs; Finance.