

S

B

F

U

F

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/16/90

FURTHER:

DATE TURNED INTO OFFICE: 4/17/90

The Finance Committee considered

SB 505

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

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_
- or adopt \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- \_\_\_\_\_ letter of intent adopted

- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

APPROVES PREVIOUS:

fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_

zero fiscal note(s) DELR 3/12/90

appropriation-no fiscal note

SIGNING DO PASS:

John Duncan  
Deane  
Paul Frick

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. John B. ... DO PASS 2. Paul Frick  
co-chairs. Signatures and Recommendations

**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						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

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

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

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**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*  
Jim Plasman, Deputy Director  
Division: Municipal & Regional Assistance  
Approved by Commissioner: *David C. Hoffmann*  
Agency: Community & Regional Affairs

Phone: 465-4750  
Date: 3/12/90  
Date: 3-12-90

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget.  
Impacted Agency(ies)

BY THE C&RA COMMITTEE

1 IN THE SENATE

2

SENATE BILL NO. 505

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to sales taxes levied by general law  
municipalities."

7

8

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

\* Section 1. AS 29.45.650(a) is amended to read:

10

(a) Except as provided in AS 04.21.010(c) and in (f) [AND (g)]

11

of this section, a borough may levy and collect a sales tax [NOT

12

EXCEEDING SIX PERCENT] on sales, rents, and on services provided in

13

the borough. The sales tax may apply to any or all of these sources.

14

Exemptions may be granted by ordinance.

15

\* Sec. 2. AS 29.45.650(g) is repealed.

# MEMORANDUM

State of Alaska

Department of Law

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

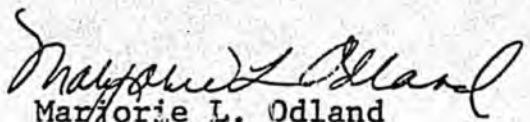
DATE: March 1, 1988

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.  
663-87-0491

March 1, 1988  
Page #2

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

March 1, 1988  
Page #3

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