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GUADALUPE, INC.
3900 WISCONSIN STREET
ANCHORAGE, ALASKA 99517

May 13, 1991

Hon. Patrick Rodey, Chairman
Senate State Affairs Committee
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, Alaska 99811

Re: Senate Bill No. 279

I represent Guadalupe, Inc., but I write also on behalf of all other eleemosynary organizations similarly situated in support of Senate Bill No. 279. I request that you make these comments available to all members of the Senate State Affairs Committee prior to the Committee's consideration of Senate Bill No. 279.

Let me first introduce Guadalupe, Inc., which is an Alaska non-profit membership corporation organized to support, financially and otherwise, Our Lady of Guadalupe Parish in Anchorage. Its non-profit status is recognized by the Internal Revenue Service under Sec. 501(C)(3) of the Internal Revenue Code. The corporation's primary activity is the One More Time Gift Shop, which sells at very attractive prices the used clothing and other items donated for that purpose by parishioners and other members of the public. All proceeds of this operation beyond its modest operating expenses are used exclusively in support of the parish. The corporation and thrift shop are staffed entirely by volunteers.

Guadalupe, Inc. claims exemption from local taxes on the inventory of the thrift shop, that is, the donated merchandise it has for sale under AS 29.53.020; the Municipality of Anchorage has levied a property tax on that inventory, citing in support of that action City of Nome vs. Catholic Bishop of Northern Alaska et al., 707 P.2d 870 (Alaska 1985). The Court here distinguished between property used primarily and directly for an exempt purpose and property used to raise funds for an exempt purpose. (Syllabus, note 12, page 871, and text of opinion, notes 12 and 13, pages 879-880). This distinction is made pursuant to the rule that tax exemption statutes are narrowly construed and does not consider the legislative intent. In any case, the result of taxing the inventories of these thrift shops is to place a further burden on their already burdensome task of producing funds to support various vital and essential services.

If the thrift shop inventory of Guadalupe, Inc. is not exempt from local property taxes under AS 29.53.020, then neither are the in-

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ventories of similar enterprises in Anchorage and elsewhere in Alaska. I cite, for example, the thrift shops operated by the Salvation Army, Easter Seals, Catholic Social Services, and the Society for the Prevention of Cruelty to Animals. All of these agencies are dependent for operating funds on the earnings of their thrift shops; all are providing essential social services which would otherwise be the responsibility of government - and they provide them at less cost and with an extra dimension of humanity. To follow a tax policy which prejudices their ability to raise funds for operating expenses is clearly bad tax policy and, in fact, just bad public policy.

These thrift shops function in other ways in support of sound public policies. It certainly is in the public interest that the less affluent in our society have sources of clothing and other necessities at low cost; it is likewise in the public interest that the recycling of serviceable items be facilitated. Thrift shops provide the means for both.

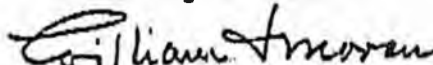
Although I am not informed as to the taxing practice elsewhere in Alaska, local governments don't determine the exemption of property from taxation. The law must be uniformly applied throughout Alaska. If the inventories of these shops are taxable in Anchorage, they are also taxable elsewhere.

I urge the members of the Senate State Affairs Committee to report his bill to the Senate with a unanimous recommendation that it pass the Senate. I further urge the members of the Committee to employ their best efforts to facilitate favorable action in the Senate Committee on Regional and Community Affairs, the next referral, and its passage by the Legislature. I know that it is late in the session, but I think the issue clear and, I should think, clothed with little or no controversy. With reasonable diligence, Senate Bill No. 279 could be enacted at this session of the Legislature.

I thank you, Mr. Chairman, and the other members of the Senate State Affairs Committee for the opportunity to be heard and for their kind consideration of these remarks.

Respectfully yours,

Guadalupe, Inc.


William J. Moran
Vice-President

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

May 15, 1991

POSITION PAPER

RE: Senate Bill 279

SPONSOR: Senate State Affairs Committee

Program Effects

Senate Bill 279 would change the fundamental concept of the property tax exemption under AS 29.45.030(c), which sets out the conditions under which certain income-producing property is required to be exempt from taxation. Under current law, the exemption is tied to the exclusive use of the property. The proposal in SB 279 would change the exemption concept from exclusive use of the property, and tie it to the type of group which would use the income derived from the property.

Comments

It is the Department's understanding that the purpose of this legislation is to correct the inequitable tax treatment of certain business inventory across the State which is similarly situated. To that end, the Department supports the concept of this proposal. While we do not in fact know of instances of inequitable tax treatment of property used exclusively for religious, charitable, or other purposes set out under AS 29.45.030(a)(3), if there is such a problem, we believe it should be corrected.

We do have serious concerns, however, with the current language in SB 279. As we read the bill, it appears to take the exemption allowance in a different direction than intended. We believe, for example, the language in the bill would allow American Legion facilities and their auxiliaries to pursue literally any type of activity on their income-producing property and still receive a mandatory tax exemption, if they could demonstrate they are a charitable organization. We also believe this proposed language would overturn the Greater Anchorage Borough versus Sisters of Charity Supreme Court case, thereby causing a required property tax exemption to attach to certain hospital property in Anchorage used for private business purposes.

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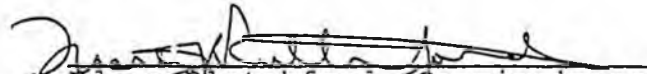
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Any time a basic concept of taxation is proposed to be changed, it is the Department's position that interested parties should proceed with the greatest care and deliberation. We therefore urge the Senate State Affairs Committee to do the necessary research and study to be certain first of all that problems of inequitable tax treatment actually exist. If they do, then we would urge the Committee to proceed with the utmost caution before amending any fundamental concept of taxation in an attempt to correct those tax inequities.

The Department stands ready to assist the Legislature in doing the necessary research and studying the issue. Then, if necessary, we would also be eager to assist you in developing bill language to resolve any problems of inequitable tax treatment which might exist.


Edgar Blatchford, Commissioner



THE ALASKA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INC.

SPCA State Headquarters and Spay Clinic • 549 W. International Airport Road • Anchorage, Alaska 99516
Phone: 562-2999

May 11, 1991

WE THE UNDERSIGNED SUPPORT SENATE BILL #279 WHICH IN EFFECT EXEMPTS NON-PROFIT, RELIGIOUS CHARITABLE, HOSPITAL OR EDUCATIONAL GROUPS FROM MUNICIPAL TAXES:

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Deliveries to: 240 Main Street
Court Plaza, Room 500
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MEMORANDUM

April 12, 1991

SUBJECT: Municipal Tax Exemption (Work Order No. 7-1189)

TO: Representative Dave Donley

FROM: Tamara Brandt Cook
Director

You have provided these facts. Anchorage levies an inventory tax on property sold by a thrift shop. The shop's earnings are used for charitable purposes. The party responsible for the shop's operation sought an exemption from the inventory tax. Citing AS 29.45.030(a)(3) and the decisions in City of Nome v. Catholic Bishop, 707 P.2d 870 (Alaska 1985) and Greater Anchorage Area Borough v. Sisters of Charity, 553 P.2d 467 (Alaska 1976), municipal officials indicated that they could not grant an exception or exemption. You have asked if this interpretation is correct. It is my opinion that the interpretation may not be correct.

AS 29.45.030(a)(3) provides "The following property is exempt from general taxation: . . . (3) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes. . ." In addition, AS 29.45.030(c) provides

Property described in (a)(3) or (4) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

An argument could be made that the inventory of the thrift shop qualifies for the exemption under AS 29.45.030(c) because income is derived from it and it is used solely by a nonprofit charitable group, the group running the thrift shop.

The court in City of Nome v. Catholic Bishop, supra, noted at page 889:

In sum, property will not lose an exemption under AS 29.53.020(a)(3) even if payment is received for the use of the property if: (1) the property is used exclusively for exempt purposes; (2) the payment is

Representative Dave Donley

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not sought as a result of a dominant profit motive; and (3) the payment is both incidental to and reasonably necessary for the accomplishment of the exempt activity and does not exceed the operating costs of the exempt activity for which payment is received. If all the above are met, the property does not lose its exemption on account of the income. If (3) is not met, the property is only exempt if used for classroom space. (Emphasis added)

This case was decided in 1985 and the court specifically held the language under former AS 29.53.020(c) permitting the use of property for classroom space applied regardless of the type of group that used it, not just to educational groups. Effective January 1, 1986 AS 29.53.020(c) was replaced with existing AS 29.45.030(c) quoted above. It is clear that under the new statute property no longer has to be used for classroom space to be exempt if it is used by a charitable group. Thus, under the reasoning of the City of Nome v. Catholic Bishop case and in view of the change in the statute since that case was decided, it is quite possible that the court would find an exemption for the inventory would apply.

Unfortunately, there have been no Alaska Supreme Court cases considering the relationship between AS 29.45.030(a)(3) and AS 29.45.030(c) as those provisions apply to property used by charitable groups for purposes other than classroom space. In view of the fact that the taxpayer claiming a tax exemption bears the burden of producing sufficient evidence to prove the property's eligibility for the exemption and that exemptions are narrowly construed, it cannot be determined with certainty that the court would find an exemption applies in this situation. However, there is no doubt that the language of AS 29.45.030(c) is much broader than that of the previous law.

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(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)

Sec. 29.45.030. Required exemptions. (a) The following property is exempt from general taxation:

(1) municipal, state, or federally owned property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(2) household furniture and personal effects of members of a household;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of an auxiliary of that organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section;

(7) real property or an interest in real property that is exempt from taxation under 43 U.S.C. 1620(d), as amended.

(b) In (a) of this section, "property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister, or religious order of a recognized religious organization;

(2) a structure, its furniture, and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education, or a nonprofit hospital;

(3) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a)(3) or (4) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.