

SB

158

ALASKA STATE LEGISLATURE

Senate District H
600 E. Railroad Avenue
Wasilla AK 99654
907-376-4866
907-373-4724 - Fax
Senator_Charlie_Huggins@legis.state.ak.us



State Capitol, Room 417
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878
www.akrepublicans.org/huggins/

Charlie Huggins Senator

4/3/05

Sponsor Statement

SB 158 – “An Act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date.”

During the course of business in the last couple of years, subcontractors in the construction industry, who work in some areas of the state, have experienced negative financial impact due to the imposition of local sales taxes on state DOT/PF funded projects.

In the case of a construction contract being awarded and a primary contractor doing business with the state, the state is the purchaser of those services and, as such, the legal incidence for the tax falls on the state. Based on the state's sovereign immunity and the fact that the state is immune from taxation no tax is owed.

However, when a subcontract is awarded and a primary contractor hires another contractor to do work for him, the subcontractor is not working directly for the state, but for the original contractor, and in some cases a sales tax has been levied on the value of the subcontract.

In one instance, on a Nome Airport Project, a construction contract was awarded to Quality Asphalt Paving (QAP). QAP and Dimond Electric entered into a subcontract directly in connection with the project funded under the construction contract. Dimond Electric was assessed a sales tax of over \$20,000 on the value of their subcontract. This tax was unexpected and not considered in their bid.

The state cannot afford to have an increase in the cost of construction projects due to the levying of sales taxes on state construction contracts or subcontracts directly awarded in connection with the project funded under the construction contract. While all municipalities do not assess this sales tax the policy needs to be consistent statewide.

SB 158 will prohibit the imposition of municipal sales and use tax on state construction contracts and certain subcontracts and remedy the inequity that exists.

Contact Information - Deborah Grundmann 465-4711

Fifty Years Serving Alaska



NECA

ALASKA CHAPTER
1953-2003

May 15, 2003

Commissioner Mike Barton
Alaska Dept. of Transportation
and Public Facilities
5132 Channel Dr.
Juneau, AK 99801-7898

Re: City of Nome Sales Tax

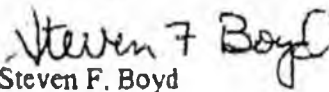
Dear Commissioner Barton:

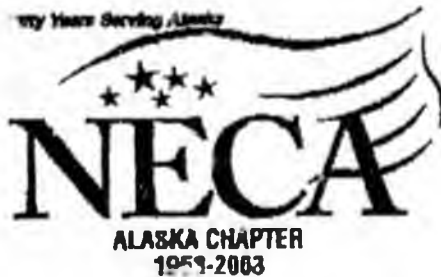
I am writing to you regarding an issue one of our member contractors is facing in Nome, Alaska as a result of their status as a subcontractor to Quality Asphalt Paving on the Nome Airport R/W 27 Rehabilitation & Obstruction Removal, #AP 3-02-0199-1201/60905. The City of Nome has taken action to assess and collect a sales tax on the value of the subcontract of Dimond Electric and in fact other subcontractors as well. Dimond Electric has unsuccessfully tried to reason with the City of Nome that not only is this not a retail sale, but the project is owned by the State of Alaska which does not pay sales tax on its purchases. Unfortunately, the City has indicated that they will be filing a lawsuit to collect the tax they have estimated as due and Dimond is faced with an expensive legal defense.

The reason we bring this to your attention is in the hope that your department may be able to investigate this and possibly intervene. If the City of Nome prevails in this action, the State will eventually be facing higher construction costs in every community with a local sales tax as word of this practice spreads. In the instant case, several subcontractors who bid the work as they normally do will suffer unexpected and substantial costs that they will not be able to recover.

If you need further information please feel free to contact me at 907 561-1958 or Dave Lantz with Dimond Electric at 907 344-1121.

Sincerely,
Alaska Chapter, NECA


Steven F. Boyd



November 13, 2004

Senator John Cowdery
Alaska State Senate
716 W. 4th Ste. 500
Anchorage, AK 99501

Dear Senator Cowdery:

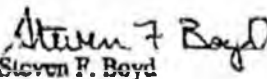
Congratulations on your recent reelection to the State Senate. Our contractor members look forward to another four years of your experience and leadership in the State Senate.

During the course of business in the last two years, subcontractors in the construction industry who work in some rural areas have experienced negative financial impact due to the imposition of local sales taxes on State D.O.T. funded projects. In our efforts to mitigate this impact, our research has shown that while the General Contracting entity is not subject to local sales tax due to their direct relationship with the State D.O.T. (which is exempt from local sales tax), the subcontractors who have a relationship to the General Contractor have been ruled to be subject to the local sales tax. Efforts on the local level, the legal system and pleas to the State D.O.T. have been fruitless. We are therefore requesting a meeting with you to provide you with the information we have and a request to pursue legislative remedy to this inequity.

I would like to suggest a meeting on the morning of November 23rd if possible since one of our out of town members who has done considerable work on this issue will be in town and available. Obviously we realize you probably have a busy schedule and we will work with you and your staff to set something up.

Thank you for your consideration.

Sincerely,
Alaska Chapter, NECA


Steven F. Boyd
Chapter Manager

CC: Scott Bringmann, Alcan Electrical & Engineering
David Lantz, Dimond Electric Co.
Ralph Kibby, Chatham Electric

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 5, 2005

SUBJECT: Taxation of construction contracts; sectional summary (SB 158)

TO: Senator Charlie Huggins, Chair
Senate Transportation Committee
Attn: Deborah Grundmann

FROM: Tamara Brandt Cook
Director *TBC*

Sec. 1. Adds to the list of statutes that apply as limitations on home rule municipalities (boroughs and unified municipalities) a reference to the new subsection added in bill sec. 3.

Sec. 2. Adds to the list of statutes that apply as limitation on home rule municipalities (cities) a reference to the new subsection added in bill sec. 4.

Sec. 3. Prevents a borough from levying a sales or use tax on state construction contracts or on subcontracts awarded in connection with the state construction project. (For an example of a definition of public construction see AS 36.95.010(3) in the State Procurement Code.)

Sec. 4. Prevents a city from levying a sales or use tax on state construction contracts or on subcontracts awarded in connection with the state construction project.

Sec. 5. Immediate effective date.

TBC:jad
05-193.jad

Kevin Ritchie

From: Dean Baugh [Dbaugh@ci.homer.ak.us]
Sent: Tuesday, April 05, 2005 7:58 AM
To: AML-Kevin Ritchie (Kevin@AKML.org)
Subject: FW: Alert Sales Tax SB 158

FYI

Dean Baugh
Finance Director
City of Homer

(907)235-8121 x2233
Fax (907) 235-3140
dbaugh@ci.homer.ak.us
www.ci.homer.ak.us

-----Original Message-----

From: Chapman, Craig [mailto:CChapman@borough.kenai.ak.us]
Sent: Tuesday, April 05, 2005 7:28 AM
To: 'Dean Baugh'
Cc: Tankersley, Troy
Subject: RE: Alert Sales Tax SB 158

Dean,

I will let Troy respond in more detail, however, I wanted to get a few thoughts in

1. What about food and lodging paid for by the contractor and subs while they are in the working on a project?
2. What about equipment rental, this includes equipment rented for the project and equipment under lease or rental agreements that will be used on a project?

Craig Chapman

-----Original Message-----

From: Dean Baugh [mailto:Dbaugh@ci.homer.ak.us]
Sent: Monday, April 04, 2005 7:32 PM
To: Barbara Rolfe; Christine Sasse (csasse@ci.valdez.ak.us); Deven Mitchell (E-mail); Kristin Erchinger (E-mail); Marti Wilkison (E-mail); Mary Munk; Michael Jones; Pam Epps; Pam Epps; Rick Miller (E-mail); Robin Feltman (E-mail); Ron Woolf; Terry Eubank; abrankin@ci.unalaska.ak.us; accountant@northpolealaska.com; akutan@gci.net; bcalkins@haines.ak.us; bharbaugh@borough.kenai.ak.us; bobn@city.ketchikan.ak.us; ralvin_kubota@ci.juneau.ak.us; cchapman@borough.kenai.ak.us; cdominquez@city.kodiak.ak.us; city@ci.delta-junction.ak.us; cityaccounts@nuvuk.net; citygrants@nuvuk.net; cityhall@mtaonline.net; craig_duncan@ci.juneau.ak.us; cwallace@borough.kenai.ak.us; Dean Baugh; dlgfinnt@nushtel.com; dlw@cityofsitka.com; don@bristolbay.com; egreene@otz.net; eval@city.ketchikan.ak.us; finance@ci.whittier.ak.us; finance@theborough.com; findir@ci.petersburg.ak.us; findir@wrangell.com; fitz@cityofsitka.com; gburton@ci.dillingham.ak.us; I.eliason@att.net; james@co.north-slope.ak.us; janet@cityofsitka.com; jhassinger@gci.net; jnsoileau@ci.fairbanks.ak.us; johnvoss@arctic.net; jsinz@borough.kenai.ak.us; kercii@cityofseward.net; kissell@ci.anchorage.ak.us; kjarrell@bssd.org; kshort@kib.co.kodiak.ak.us;

kveech@matsugov.us; Laura_houston@key.com; lestenkofsnp@hotmail.com; Lisa Vaughn;
lsemmens@ci.kenai.ak.us; lwalters@cityofbethel.org; mayod2@alyeska-pipeline.com;
mdouglas@kpbsd.k12.ak.us; melodym@seward.net; millerRE@muni.org;
mlamb@co.fairbanks.ak.us; mlewis@ci.soldotna.ak.us; mroyall@city.kodiak.ak.us;
mwilkison@ci.soldotna.ak.us; pattyk@city.ketchikan.ak.us; paula.bush@north-slope.org;
pmacdonald@co.fairbanks.ak.us; pracct@aptalaska.net; raikumspw@ci.anchorage.ak.us;
rgifford@cityofseward.net; roanb@sbcglobal.net; rstrahan@cityofbethel.org; sally@cityofsitka.com;
scolligan@ci.wasilla.ak.us; seldcity@xyz.net; sheglin@city.kodiak.ak.us; sholt@borough.kenai.ak.us;
sptcity@arctic.net; susan_randlett@dec.state.ak.us; tclayton@matsugov.us;
tleonard@ci.wasilla.ak.us; ttankers@borough.kenai.ak.us
Subject: FW: Alert Sales Tax SB 158

-----Original Message-----

From: Kevin Ritchie [mailto:kevin@akml.org]
Sent: Monday, April 04, 2005 2:22 PM
To: Dean Baugh
Cc: Kathie; Annie
Subject: Alert Sales Tax SB 158

Dear Dean

Please pass this on to Finance Directors and Sales Tax administrators. This bill introduced last Friday already has a hearing Wednesday April 6th at 1:30 p.m. in Senate Community and Regional Affairs

Thanks
Kevin

I need to know if municipalities are impacted by this new exemption to municipal sales tax. At this point the only impacted community I know of is Nome. The primary issue is taxation of subcontractors working on a state construction contract.

SB 158 "A borough (or city) may not levy or collect a sales or use tax on a construction contract awarded by the state or a state agency, or on a subcontract awarded in connection with the project funded under the construction contract."

*NEW E-MAIL: kevin@akml.org
Kevin Ritchie, Executive Director
Alaska Municipal League
office: 907-586-1325
Fax: 907-463-5480*

Kevin Ritchie

From: Tankersley, Troy [ttankers@borough.kenai.ak.us]
Sent: Tuesday, April 05, 2005 7:25 AM
To: 'Dean Baugh'
Cc: 'kevin@akml.org'
Subject: RE: Alert Sales Tax SB 158

Dean, Kevin,

I would like to expand on what Craig has indicated:

I will let Troy respond in more detail; however, I wanted to get a few thoughts in

1. What about food and lodging paid for by the contractor and subs while they are in the working on a project?
2. What about equipment rental, this includes equipment rented for the project and equipment under lease or rental agreements (i.e. heavy equipment, port-a-potties, etc.) that will be used on a project?
3. Most costs associated to a project are costs of doing business regardless of who the contract is for. These costs are and should be built in when a contractor bids on a particular project. Additional to this are direct costs associated for a project (i.e. contractor who purchases lumber to build a home). These costs are normally exempted via a Resale Certificate issued to the contractor or subcontractor doing business within the KPB. The State of Alaska is an exempt government entity, so when the contractor bills the State of Alaska for the project no sales tax would be included provided the State of Alaska issues a government check, government purchase order, government credit card or government procurement card. Thus, the end result is the direct costs are exempted entirely, but the indirect costs or operational costs are taxed to the contractor.
4. A contractor or subcontractor is NOT a government entity (by IRS rules) and thus, should not be given the same treatment as one.

Kenai Peninsula Borough
 Craig Chapman, Controller
 Troy Tankersley, Accounting Supervisor, Sales Tax

-----Original Message-----

From: Dean Baugh [mailto:Dbaugh@ci.homer.ak.us]
Sent: Monday, April 04, 2005 7:32 PM
To: Barbara Rolfe; Christine Sasse (csasse@ci.valdez.ak.us); Deven Mitchell (E-mail); Kristin Erchinger (E-mail); Marti Wilkison (E-mail); Mary Munk; Michael Jones; Pam Epps; Pam Epps; Rick Miller (E-mail); Robin Feltman (E-mail); Ron Woolf; Terry Eubank; abrankin@ci.unalaska.ak.us; accountant@northpolealaska.com; akutan@gci.net; bcalkins@haines.ak.us; bharbaugh@borough.kenai.ak.us; bobn@city.ketchikan.ak.us; calvin_kubota@ci.juneau.ak.us; cchapman@borough.kenai.ak.us; cdominiquez@city.kodiak.ak.us; city@ci.delta-junction.ak.us; cityaccounts@nuvuk.net; citygrants@nuvuk.net; cityhall@mtaonline.net; craig_duncan@ci.juneau.ak.us; cwallace@borough.kenai.ak.us; Dean Baugh; dlginnt@nushtel.com; dlw@cityofsitka.com; don@bristolbay.com; egreene@otz.net; eval@city.ketchikan.ak.us; finance@ci.whittier.ak.us; finance@theborough.com; findir@ci.petersburg.ak.us; findir@wrangell.com; fitz@cityofsitka.com; gburton@ci.dillingham.ak.us; I.eliason@att.net; james@co.north-slope.ak.us; janet@cityofsitka.com; jhassinger@gci.net; jnsoileau@ci.fairbanks.ak.us; johnvoss@arctic.net; jsinz@borough.kenai.ak.us; kerch@cityofseward.net; kissell@ci.anchorage.ak.us; kjarrell@bssd.org; kshort@kib.co.kodiak.ak.us; kveech@matsugov.us; Laura_houston@key.com; lestenkofsnp@hotmail.com; Lisa Vaughn; lsemmens@ci.kenai.ak.us; lwalters@cityofbethel.org; mayod2@alyeska-pipeline.com;

mdouglas@kpbsd.k12.ak.us; melodym@seward.net; millerRE@muni.org;
mlamb@co.fairbanks.ak.us; mlewis@ci.soldotna.ak.us; mroyall@city.kodiak.ak.us;
mwilkison@ci.soldotna.ak.us; pattyk@city.ketchikan.ak.us; paula.bush@north-slope.org;
pmacdonald@co.fairbanks.ak.us; pracct@aptalaska.net; raiskumspw@ci.anchorage.ak.us;
rgifford@cityofseward.net; roanb@sbcglobal.net; rstrahan@cityofbethel.org; sally@cityofsitka.com;
scolligan@ci.wasilla.ak.us; seldcity@xyz.net; sheglin@city.kodiak.ak.us; sholt@borough.kenai.ak.us;
sptcity@arctic.net; susan_randlett@dec.state.ak.us; tclayton@matsugov.us;
tleonard@ci.wasilla.ak.us; ttankers@borough.kenai.ak.us
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NEW E-MAIL: kevin@akml.org
Kevin Ritchie, Executive Director
Alaska Municipal League
office: 907-586-1325
Fax: 907-463-5480

Kevin Ritchie

From: Paul Day [daypar72@pci.net]
Sent: Tuesday, April 05, 2005 7:48 AM
To: Kevin Ritchie
Subject: SB 158

Kevin,

I think most communities that use Boyd, Chandler & Falconer as their legal firm (Nome, Sand Point, Unalaska and others) have a policy of collecting sales tax from sub-contractors doing business in their community regardless of the funding source(s). Brooks Chandler (272-8401) can speak to this better than I.

Paul Day

Kevin Ritchie

From: Larry Semmens [lsemmens@ci.kenai.ak.us]
Sent: Tuesday, April 05, 2005 6:56 AM
To: Kevin Richie
Subject: stx

Hi Kevin

What can happen with this type of exemption is that the contractor claims everything they buy is exempt. Not just the materials that are consumed in the project. We dealt with this on the Bradley Lake project. Generally I think the KPB stx already exempts most of what contractors of any type do under the resale exemption. So I don't know how much this would affect.

Larry Semmens
Finance Director
City of Kenai