




CBJ Law Department
MEMORANDUM

To: Craig Duncan
Finance Director

From: Barbara J. Ritchie 
Deputy City Attorney

Subject: Tlingit-Haida Central Council's Request for Sales Tax Exemption

Date: November 14, 2008

You requested that I review the request by Tlingit-Haida Central Council for an exemption from sales tax. You also requested that I prepare a draft ordinance for consideration by the Assembly Finance Committee.

Central Council of Tlingit-Haida Indian Tribes of Alaska (THCC) is a federally recognized Indian tribe. An Indian tribe is a distinct, independent political entity that retains certain attributes of sovereignty under federal law. In addition, federal recognition entitles the tribe to participate in many statutory benefits and federal programs. Federally recognized tribes are not subject to federal income tax. This is because under the Internal Revenue Code, Section 7871, Indian tribal governments are treated as states for certain federal tax purposes, including income tax.

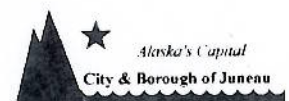
Is CBJ prohibited from imposing sales tax on THCC?

No. As a general rule, state and local taxes may be applied to activities of Indian tribes that take place off-reservation or off-Indian country, unless Congress has expressly prohibited such taxes or the state or local authority is preempted by operation of federal law. THCC, like most of the federally recognized tribes in Alaska, does not occupy a reservation or Indian country. Under these circumstances, CBJ is not preempted by federal law from applying sales tax to THCC's purchases and sales.

Is THCC exempt from sales tax under any of the existing exemptions?

No. There are two sales tax exemptions to review:

1. CBJ 69.05.040(2): this section provides that sales, services, rentals, and transactions which the CBJ is prohibited from taxing under the Constitution and laws of the United States or the state are exempt from sales tax. As explained above, CBJ is not prohibited by federal law from applying sales tax to THCC's transactions. There is no state law that prohibits CBJ from imposing sales tax on THCC. Thus, THCC does not fall under this exemption.



2. CBJ 69.05.040(13): this section provides that “retail sales, services, and rentals of real or tangible personal property to or by the state, a Rural Education Attendance Area or like entity, or a municipality” are exempt from sales tax. There are certain exceptions to this exemption: the sales of pull-tab games by political subdivisions and municipalities; and a list of services provided by CBJ.

THCC does not fall within this exemption. THCC is not the state and it is not a municipality. THCC is also not a Rural Education Attendance Area (REAA) or like entity. REAA’s are educational service areas within the unorganized borough established under state law to provide for public education in those parts of Alaska under the management of a regional school board. I do not think a federally recognized tribe is a “like entity” to an REAA, particularly given the mandate in the Sales Tax Code that exemptions are to be allowed only when the transaction “clearly falls within an exemption.” CBJ 69.05.005.

Can the Assembly enact an ordinance to exempt THCC from sales tax?

Yes. If the Assembly decides to enact an exemption, I would recommend that the exemption apply to any federally recognized tribe so that all such tribes are all treated the same for sales tax purposes. I have attached a draft ordinance that would amend CBJ 69.05.040(13) to exempt federally recognized tribes from sales tax with the exception of sales of pull-tab games by the tribe. This exception to the exemption would treat tribes the same as political subdivisions and municipalities that sell pull-tab games. The draft ordinance also defines “federally recognized Indian tribe” to reference the appropriate federal law on tribal recognition.

Tribal governments, such as THCC, provide a variety of services to their members. In certain specific areas, Internal Revenue Code Section 7871 places the tribal governments on the same footing as state and local governments that provide similar services to their citizens. See “FAQs for Indian Tribal Governments regarding IRC Section 7871 (Tribes Treated Like States for Federal Tax Purposes)” at <http://www.irs.gov/govt/tribes/article/0,,id=108359,00.html>. A provision that would treat federally recognized tribes the same as state and local governments for CBJ sales tax purposes would serve this same end, economically benefiting the tribal government and thereby increasing the tribe’s resources for services it provides to members.

Attachment: Draft Ordinance

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Presented by: The Manager
Introduced:
Drafted by: J.W. Hartle

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2008-XX

An Ordinance Amending the Sales Tax Code to Exempt Federally Recognized Tribes From Sales Tax With the Exception of the Sales of Pull-Tab Games.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough Code.

Section 2. Amendment of Section. CBJ 69.05.010 Definitions, is amended to add a new definition to read:

69.05.010 Definitions.

...

Federally recognized Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior has acknowledged to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454, 25 U.S.C. 479a.

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Section 3. Amendment of Subsection. CBJ 69.05.040(13) is amended to read:

...

(13) Retail sales, services, and rentals of real or tangible personal property to or by the state, a Rural Education Attendance Area or like entity, *a federally recognized Indian tribe*, or a municipality. This exemption does not apply to the following:

(a) Sales of pull-tab games by *federally recognized Indian tribes*, political subdivisions, and municipalities; or

...

Section 4. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this day of 2008.

Bruce Botelho, Mayor

Attest:

Laurie J. Sica, Clerk