



## Sales Tax Interpretation 11-05

### Additional Clarification of Resale Tax Exemptions in Conjunction with the Provision of Services

Per the City and Borough of Sitka General Code 4.09.100, Exemptions...

*P. Resale. The sale for resale of a product, service, or rental to a consumer where the resale is subject to tax is exempt.*

In Sales Tax Interpretation 11-03, the following interpretation of resale exemptions was made:

*It is, therefore, the City and Borough of Sitka's determination that tangible personal property which is wholly, or partially consumed during the provision of a service is not considered a resale of a product, even if it is itemized separately on the final retail invoice to the end customer. Tangible personal property which is transformed or transferred during the provision of a service is considered the resale of a product; such tangible personal property, however, must constitute a substantial portion of the overall cost of the service and can't be incidental.*

Further questions have arisen as to whether the sale of products consumed during the provision of a service can be considered to be a resale of that product and exempt from the levying of sales tax. The additional questions pertain to the bundling of services, and, to specific service types, and include the following:

1. The purchase of rock salt in conjunction with snow plowing services.
2. The purchase of janitorial supplies in conjunction with janitorial services.
3. The purchase of fish processing and packaging services in conjunction with commercial fishing and/or charter operations.
4. The bundling of services, lodging, and seafood products in conjunction with all-inclusive charter sales.

**It is, therefore, the City and Borough of Sitka's additional determination that the term substantial, as used in Sales Tax Interpretation 11-03, is defined to be 25% or more of the selling price of the service. Thus, for a transaction to be considered the sale of tangible personal property for resale in conjunction with the provision of a service and therefore tax exempt, both of the following conditions must be met:**

- a. The tangible personal property must be transformed into a new and visible form during the service, and**
- b. The cost of the tangible personal property which is transformed must be more than 25% of the overall selling price of the service.**

**It is also the City and Borough of Sitka's additional determination that those separate and disparate purchases of tangible property, rentals, and other services, which are subsequently bundled together and resold in an all-encompassing transaction with a single selling price, shall be treated as one single bundled transaction. If such a bundled transaction includes the provision of services along with any combination of the provision of purchased services, the provision of lodging, and/or the provision of tangible personal property in conjunction with the services, the entire bundled transaction shall be considered as the provision of services. The additional services, lodging, and tangible**

**personal property purchased in conjunction with the provision of services in a bundle are considered to be consumable expenses of the business and not resale and, therefore, not subject to the sales tax exemption provided for in Section 4.09.100(P) of the Sitka General Code.**

**The key interpretations here further define what “substantial” means, and clarify how bundled transactions are to be treated. The following paragraphs apply these interpretations to the questions raised above:**

1. The purchase of rock salt in conjunction with snow plowing services is considered to be a consumable expense of the snow plowing business if it is spread or applied by the snow plow operator. This is because the rock salt is not transformed into a new and visible form during the provision of the service and is considered insubstantial to the overall cost of the service. Rock salt which is provided by the snow plow operator in bags in bulk to the customer, which is to be spread or applied by the customer at times determined by the customer, is considered a sale for resale of rock salt and is a sales tax exempt transaction. If, however, the salt is purchased in bulk, or in multiple bags in one combined purchase, some of which is subsequently utilized in conjunction with the snow plowing services and some of which is resold to customers, the entire bulk purchase is considered to be utilized in conjunction with the service and not a sale for resale and the sale, therefore, is taxable.
2. The purchase of janitorial supplies in conjunction with janitorial services is considered to be a consumable expense of the janitorial business if used or consumed by the janitorial business. This is because the supplies are not transformed into a new and visible form during the provision of the service and is considered insubstantial to the overall cost of the service. Supplies which are provided by janitorial service provider to the customer, which are to be used by the customer at times determined by the customer, are considered a sale for resale of janitorial supplies and are sales tax exempt transaction. If, however, the janitorial supplies are purchased in bulk, some of which is subsequently utilized in conjunction with the janitorial services and some of which are resold to customers, the entire bulk purchase is considered to be utilized in conjunction with the service and not a sale for resale and the sale, therefore, is taxable.
3. Commercial fishing is interpreted to be a business activity involved in extraction and transfer of a natural resource for profit. It is not interpreted to be the provision of a service or a retail sales business. The end transfer of the seafood extracted from commercial fishing business activities for further processing is the primary business focus. The natural resource extraction process itself is the major and substantial portion of the activity. Thus, all purchases of additional services and tangible personal property purchased in conjunction with commercial fishing activities are interpreted to be consumable expenses of the business. If a commercial fishing business operates a retail sales activity in conjunction with the commercial fishing activities, an example being the direct retail sales of seafood to the general public, the sales of tangible personal property used to package or otherwise add value to the seafood in order to enable the retail sale, as distinguished from costs necessary to enable the wholesale or customary transfer of the seafood for further processing, are considered a sale for resale and are tax exempt transactions. Examples are as follows:
  - a. Fuel and bait are required to enable the customary transfer of the seafood for further processing and are considered consumable expenses of the commercial fishing business.
  - b. The purchase of vacuum packing, boxing, and smoking services in order to add additional value to seafood for retail sale to the general public are solely attributable to the retail activity and are considered the resale of tangible personal property.

1. Charter fishing operations are interpreted to be the sale of services which are recreational and entertaining in nature. The primary focus of such businesses is the provision of entertainment and recreational pleasure to the business's customers, not the extraction of natural resources. As such, charter operations are considered to be the sale of services. As described in Sales Tax Interpretation 11-03, for a transaction to be considered the sale of tangible personal property for resale in conjunction with the provision of a service and therefore tax exempt, the following conditions must be met: (1) the tangible personal property must be transformed into a new and visible form during the service, and (2) the cost of the tangible personal property which is transformed must be more than 25% of the overall selling price of the service. Tangible personal property acquired by the charter operator to package the seafood caught by customers on charters is seen as incidental to the charter itself and offered as a complimentary service designed to enhance the recreational experience. The purchase of such services is not, therefore, seen as a sale for resale and is not tax exempt.
2. The bundling of services, lodging, and tangible personal property in conjunction with all-inclusive charter sales are interpreted to ultimately be the bundled sale of services. The purchases of additional services, lodging, and tangible personal property purchased in conjunction with the provision of services in a bundle are considered to be consumable expenses of the business and not resale activities.

December 19, 2011

Approved by: John P. (Jay) Sweeney III, Finance Director  
CC: Brenda Calkins, Sales Tax Auditor  
Marjorie Parmelee, Sales Tax Clerk

### ***Clarification of Resale Interpretation***

Resale exemption for a short term equipment rental is a taxable purchase, except where the item is being resold within a contract to an end payer, who is then paying the sales tax on said transaction.

This issue that has been brought up by a retailer in need of guidance regarding enforcement and verification as the responsible business of making sure only sub-contractors receive said exemption.

We have concluded that at all purchase/rental of equipment transactions made by the sub-contractor, contractor, or end consumer, is to be charges sales tax on LT/ST equipment rentals.

The argument made, that a sub-contractor should be exempt from this tax, because they are reselling it, is a valid argument. However, because the sub contract is reselling his "bundled" service to the Contractor for a set price and charging/collecting sales tax from the rental, which should be included in that "bundled" price, that purchase/invoice will be exempt as a wholesale item at the time of reporting/remitting quarterly sales tax, resulting in a reimbursement of sales tax paid by the sub-contractor for the rental of the equipment.

April 27, 2016

Approved by: Mike Middleton, Deputy Finance Director  
CC: Hannah Nelson, Sales Tax Auditor  
Kristy Crews, Sales Tax Clerk