

Sales Tax Interpretation 20-01

Sales of Gift Cards Do Not Constitute Taxable Sales

The Finance Director has made a sales tax interpretation that sales of gift cards for remote sellers do not constitute a taxable sale for purposes of collecting and remitting sales tax. This interpretation must now be either adopted or rejected by the Assembly, per SGC 4.09.400.

Facts:

1. The City and Borough of Sitka has had an interpretation in place, since 2013, that sales of gift cards to remote sellers constitutes taxable sales. The interpretation differentiates sales of gift cards for remote sellers from those of local merchants. The sales of gift cards for local merchants has always been considered tax exempt.
2. The 2013 interpretation that sales of gift cards to remote sellers constitutes taxable sales follows the over-arching guidance, per SGC 4.09.030, that all sales by a person engaging in business are subject to the sales tax, unless the sale is exempted.
3. As e-commerce has become more pervasive and commonplace since 2013, sales of gift cards in Sitka, to be used to place orders in Sitka with remote e-commerce merchants for delivery to Sitka are increasing.
4. Recent action by local governments in Alaska to form a remote seller taxation authority should eventually lead to collection and remittance of sales tax on the vast majority of remote e-commerce sales within the near future.

Discussion:

1. Prior to the Wayfair decision by the United States Supreme Court and the subsequent voluntary collection and remittance of sales taxes by some large remote vendors, the delivery of goods to Sitka by remote merchants, for orders placed in Sitka, evaded sales tax. The decision made in 2013 attempted to capture sales taxes evaded through use of gift cards by taxing them upon sale of the card locally.
2. The current policy of taxing the sale of remote seller gift cards could commonly lead to double taxation. This is because the sales the card is used to pay for are often taxed, especially when the gift card is used in a brick and mortar store. The double taxation could be collecting Sitka tax twice, or, collecting Sitka tax and another State's tax. Examples:
 - a. *A local merchant sells a \$50 Visa gift card and collects \$2.50 in sales tax. The Visa gift card is used in Sitka and the Sitka merchant charges \$2.50 in tax on the sale. The customer is double taxed.*
 - b. *A local merchant sells a \$50 Visa gift card and collects \$2.50 in sales tax. The Visa gift card is used in Washington by a Washington resident and the Washington merchant charges tax on the sale. The sales tax is ultimately collected twice.*
3. It is possible that if the decision to make sales of all gift cards in Sitka not taxable is upheld by the Assembly, that sales tax may not be collected on some sales that would otherwise be taxable. This would be until the current initiative by local governments in Alaska to form a remote seller sales tax authority is finalized. Example:

- a. *A gift card is purchased in Sitka and is used to pay for an order placed in Sitka for delivery to Sitka and the seller is not voluntarily collecting and remitting sales tax. No tax would be collected on an otherwise taxable sale.*
4. A strong argument could be made that sale of gift cards in Sitka does not constitute a sale under the definition set forth in SGC 4.09.420, as no consideration is given in exchange. Indeed, one does get a plastic gift card, but that card is essentially worthless unless and until used. Thus, no real consideration is given and, since no consideration is given, a taxable sale has not taken place at the point in time that the gift card is sold.

Interpretation

As no true consideration is given in exchange at the point in time when a gift card is purchased, the sale of any gift cards or gift certificates in Sitka is hereby deemed to not constitute a sale under the definition set forth in SGC 4.09.420.

Any citizen who has otherwise paid Sitka sales tax on the purchase of a gift card in Sitka may henceforth request a refund of such taxes per SGC 4.09.370, upon submitting proof of taxes erroneously paid.

December 23, 2019

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To be submitted to the Assembly for ratification