

Sand Point Sales Tax Ordinance.

A. Taxation of Sales of Gravel. SCO 6.10.200(16) specifically identifies the “[s]ale of sand, gravel, rock, . . . whether in place or previously quarried” as an example of a “taxed transaction”. Accordingly, the sale of gravel from Shumagin to West is subject to tax. If, for example, West makes a \$9,000 royalty payment to Shumagin, West should include an additional payment of \$240 in sales tax. (3% of \$9,000). In addition, if West sells the same gravel in Sand Point, West must add 3% in sales tax to the bill (or bills) provided to West’s gravel customers. There are two exceptions to this rule discussed below.

B. Exceptions from Tax.

1. Government Sales. SCO 6.10.150(5) indicates sales made “directly to the governments of the United States, the state, the city, the Aleutians East Borough, or any instrumentality or political subdivision thereof” are exempt from tax but also states “this exemption shall not apply to the sale of materials and supplies to contractors for the construction, manufacture, or production of property or rendering services for sale to such government units or agencies pursuant to contract, in which event the contractor shall be deemed the buyer subject to the payment of the tax”. Accordingly, if West itself has a supply contract with the governmental entity and sells gravel to the governmental entity no sales tax should be charged by West to its governmental customer. Similarly, if West has a construction contract with the government and uses Shumagin gravel itself in the course of performing the contract West does not have to charge the government sales tax. However, if West supplies gravel to another contractor or subcontractor for use on a government project West must charge that contractor sales tax. This is true even if West is supplying to its own subcontractor. The ordinance clearly states such sales are not made “directly” to the tax exempt governmental entity and are subject to tax.

2. Out of Town Sales. SCO 6.10.110 indicates sales tax is charged only on “sales within the corporate limits of the city”. SCO 6.10.150(7) indicates “shipments by the seller via common carrier to communities or establishments beyond the city limits” are exempt from tax. Thus, if West sells gravel FOB the dock at Sand Point for shipment outside city limits by “common carrier” West does not have to charge the customer sales tax. A “common carrier” includes a regulated marine transportation company who adds the gravel being shipped to other items being carried on a voyage; typically for multiple customers in the Aleutians. West itself (or any other contractor who happens to own or bareboat charter their own barge) will not be considered a common carrier for purposes of this exemption. Whether a non-bareboat chartered single purpose barge will be considered a “common carrier” may depend on the precise terms of the charter. In such a situation West or its customer should

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March 17, 2003

Mr. Paul Day
City Administrator
City of Sand Point
3380 C Street, Suite 205
Anchorage, Alaska 99503

Re: Application of Sales Tax to Sales of Gravel

Dear Paul:

This is written in response to your e-mail of February 28 regarding the above-referenced matter. Based on our review of the Sand Point code of ordinances we have concluded as follows:

1. The Shumagin Corporation should be collecting 3% sales tax on all royalties paid by West Construction.
2. West Construction should be collecting a 3% sales tax on all sales of gravel except gravel shipped by common carrier to places beyond city boundaries and except sales of gravel made to persons who are exempt from tax.
3. A sale of gravel to a state or federal project is not exempt unless the sale is made directly to the state or federal government. Sales made to a general contractor or subcontractor working on a state or federal project are not exempt from sales tax.

The reasons for these conclusions are explained in greater detail below.

Facts.

The Shumagin Corporation ("Shumagin") owns gravel located within the city limits of the City of Sand Point. West Construction ("West") has agreed to extract and sell the gravel. West pays Shumagin a royalty. Typically, a royalty is based on the gross proceeds received by West from sales of the gravel. West sells the gravel to a variety of customers for use both inside and outside city limits.

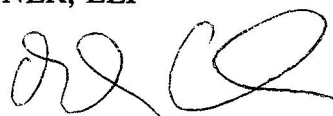
seek a ruling from the City pursuant to SCO 6.10.210(b). This request should include a copy of the charter agreement.

If you have any additional questions regarding this matter please let me know. You should feel free to provide a copy of this letter to both the Shumagin Corporation and West Construction.

Very truly yours,

HICKS, BOYD, CHANDLER &
FALCONER, LLP

By:



Brooks W. Chandler