

September 24, 1991

The Honorable Cheri L. Davis
Alaska State House of Representatives
P.O. Box 5723
Ketchikan, AK 99901

Re: Personal property tax exemption
-- AS 29.45.050(b)(3)
(AG File No. 663-91-0443)

Dear Representative Davis:

This letter is in response to your May 1, 1991, opinion request as to whether the City of Petersburg may exempt certain types of personal property -- for example, commercial fishing gear -- from taxation while imposing a tax on other types of personal property. In other words, if the City of Petersburg should decide to exempt personal property from taxation, may it exempt some types of property and not others. For the purposes of this memorandum, I am assuming that existing law and any amendments to existing law could withstand equal protection analysis.

Article X, Section 11, Constitution of the State of Alaska, is the source of home rule powers. It provides: "A home rule borough or city may exercise all legislative powers not prohibited by law or charter." A parallel provision is contained in the Alaska Statutes. AS 29.04.010. The City of Petersburg is a home rule city, therefore, it may exercise all legislative powers not prohibited by law or charter.

Article IX, Section 4, Constitution of the State of Alaska, provides:

The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation.

Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.

(Emphasis added.)

AS 29.45.550 provides that "Home rule and first class cities outside boroughs may assess, levy, and collect a property tax. A property tax if levied must be assessed, levied, and collected as provided by AS 29.45.010 -- 29.45.500."

AS 29.45.050(b)(3) provides that "A municipality may by ordinance exempt personal property from taxation." This paragraph was added by ch. 74 SLA 1985 and acts as a limitation on home rule powers. See AS 29.10.200(41). I reviewed the legislative history surrounding all the exemptions contained in AS 29.45.050, and found no guidance as to the legislative intent behind the personal property exemption.

On its face, without reference to the rest of the statute, AS 29.45.050(b)(3) would appear to allow a municipality to exempt some types of property and not others, assuming, of course, the exemption is consistent with equal protection. However, when compared to other subsections of .050 the personal property exemption becomes more problematic. For example, subsection (b)(5) provides that "A municipality may by ordinance classify as to type and exempt or partially exempt any or all types of motor vehicles from taxation." (Emphasis added.) While this subsection was in effect prior to 1985, it was reenacted as part of ch. 74, SLA 1985. Subsection (m) provides in part that "A municipality may by ordinance partially or totally exempt all or some types of economic development property...." (Emphasis added.) Subsection (n) provides identical treatment for inventories intended for export outside the state. Both subsections (m) and (n) were added by ch. 98, SLA 1989. 1/

Clearly, subsection (b)(5), and subsections (m) and (n), allow a municipality to do with respect to motor vehicles, economic development property and export inventories, respectively, what the City of Petersburg would like to do with respect to subsection (b)(3) -- the personal property exemption.

1/ In addition, AS 29.45.050 specifically provides that a municipality may exempt from taxation: boats and vessels, [personal] property of a nonprofit organization and personal property used in the processing of timber.

If, however, the personal property exemption were to be construed to allow municipalities to exempt all or some types of personal property, a well-established principle of statutory construction would be violated. And that is that "A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous...." Sutherland Stat. Const. •46.06 (4th Ed); Accord Faulk v. Estate of Haskins, 714 P.2d 354, 355, (Alaska 1986) ("It is desirable to avoid interpretations which make statutory language superfluous.")

In the absence of any legislative intent to the contrary and based upon the principle of statutory construction discussed above, it is my opinion that if the City of Petersburg should decide to exempt personal property from taxation under AS 29.45.050(b)(3), it must exempt all personal property. This general rule does not, however, apply to motor vehicles, economic development property, inventories intended for export outside the state, as well as the other personal property exemptions specifically provided for in AS 29.45.050. For example, a home rule city could, in my opinion, exempt any or all types of motor vehicles from taxation while taxing all other personal property within its jurisdiction.

Before the City of Petersburg may exempt commercial fishing gear from taxation, AS 29.45.050 must be amended, either by amending subsection (b)(3) to read, for example, "A municipality may by ordinance exempt all or some types of personal property from taxation" or, alternatively and preferably, by adding a new subsection specifically exempting commercial fishing gear from taxation.

I hope this information is helpful to you and the City of Petersburg. Please don't hesitate to contact me if you should have additional questions regarding this matter.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:

Jeffrey D. Landry
Assistant Attorney General

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cc: Mike Worley, State Assessor