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City Sales and Property Taxes

Number: B-205150

Date: 1982-01-27

B-205150 L/M, JAN 27, 1982, OFFICE OF GENERAL COUNSEL

DIGEST: FEDERAL LAW DOES NOT PROHIBIT IMPOSITION OF SALES TAX ON PURCHASES BY ALASKA NATIVE VILLAGE CORPORATION, NOR DOES IT PROHIBIT IMPOSITION OF PROPERTY TAX ON CORPORATION REAL PROPERTY INTERESTS WHICH ARE DEVELOPED OR LEASED TO THIRD PARTIES. ALASKA NATIVE CLAIMS SETTLEMENT ACT, WHICH CREATED CORPORATIONS, IMMUNIZED CORPORATION REVENUE FROM TAXATION ONLY WHEN INITIALLY RECEIVED FROM ALASKA NATIVE FUND, AND CORPORATION REALTY FROM TAXATION ONLY WHEN UNDEVELOPED OR NOT LEASED. ONCE RECEIVED, CORPORATION FUNDS ARE PRIVATE, NOT GOVERNMENTAL, AND ARE THUS NOT IMMUNE FROM TAXATION UNDER EITHER THE SETTLEMENT ACT OR THE SUPREMACY CLAUSE OF U. S. CONSTITUTION.

MR. LELAND LITTLE, CONTROLLER, KAWERAK, INC.:

YOU HAVE ASKED WHETHER THE CITY OF NOME, ALASKA, MAY IMPOSE CITY SALES AND PROPERTY TAXES UPON AN ALASKAN NATIVE VILLAGE CORPORATION. KAWERAK, INC. IS ONE OF THE VILLAGE CORPORATIONS ESTABLISHED UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, 43 U.S.C. SECS. 1601-1628. IT IS A NONPROFIT CORPORATION SUPPORTED BY THE FEDERAL AND STATE FUNDS PROVIDED FOR BY THE ACT. FOR THE FOLLOWING REASONS, WE CONCLUDE THAT FEDERAL LAW DOES NOT PROHIBIT THE IMPOSITION OF CITY SALES AND PROPERTY TAXES ON A VILLAGE CORPORATION.

THE PRIMARY PURPOSE OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT WAS TO SETTLE THE LONG-STANDING LAND CLAIMS OF THE ALASKA NATIVES IN A FAIR AND EXPEDITIOUS MANNER. THE ACT EXTINGUISHED ALL ABORIGINAL CLAIMS TO LAND IN ALASKA. IN RETURN, THE NATIVES RECEIVED TITLE TO A TOTAL OF 38,000,000 ACRES OF LAND AND PAYMENTS OF $462,500,000 FROM THE GENERAL FUND OF THE TREASURY AND $500,000,000 FROM MINERAL ROYALTIES. 43 U.S.C. SECS. 1601, 1603, 1605, 1608, 1611. ALASKA WAS DIVIDED INTO TWELVE GEOGRAPHIC REGIONS. 43 U.S.C. SEC. 1606(A). (IN ADDITION, NONRESIDENT NATIVES COULD ELECT TO ENROLL IN A THIRTEENTH REGION. 43 U.S.C. SEC. 1606(C).) REGIONAL CORPORATION, INCORPORATED UNDER THE LAWS OF ALASKA, WAS TO BE ESTABLISHED WITHIN EACH REGION "TO CONDUCT BUSINESS FOR PROFIT." U.S.C. SEC. 1606(D).

THE ACT ALSO PROVIDED FOR THE ESTABLISHMENT OF VILLAGE CORPORATIONS, TO BE ORGANIZED AS EITHER PROFIT OR NONPROFIT ENTITIES. 43 U.S.C. SEC. 1607(A). DURING THE 5 YEARS FOLLOWING ENACTMENT OF THE LEGISLATION, THE VILLAGE CORPORATIONS WERE TO RECEIVE DISTRIBUTIONS OF AT LEAST 45 PERCENT OF THE FUNDS RECEIVED BY THE REGIONAL CORPORATIONS UNDER 43 U.S.C. SEC. 1605 (THE ALASKA NATIVE FUND), 43 U.S.C. SEC. 1606(I) (REVENUES FROM TIMBER RESOURCES AND SUBSURFACE ESTATE), AND ALL OTHER NET INCOME. U.S.C. SEC. 1606(J). AFTER THE FIRST 5 YEARS, NOT LESS THAN 50 PERCENT OF THESE FUNDS WERE TO BE DISTRIBUTED AMONG VILLAGE CORPORATIONS OF THE REGION AND THE CLASS OF STOCKHOLDERS WHO WERE NOT RESIDENTS OF THOSE

VILLAGES. ID.

SECTION 21 OF THE ACT, 43 U.S.C. SEC. 1620, PROVIDES, WITH REGARD TO THE TAXATION OF VILLAGE CORPORATIONS, THAT:

"(A) REVENUES ORIGINATING FROM THE ALASKA NATIVE FUND SHALL NOT BE SUBJECT TO ANY FORM OF FEDERAL, STATE, OR LOCAL TAXATION AT THE TIME OF RECEIPT BY A REGIONAL CORPORATION, VILLAGE CORPORATION, OR INDIVIDUAL NATIVE THROUGH DIVIDEND DISTRIBUTIONS OR IN ANY OTHER MANNER. THIS EXEMPTION SHALL NOT APPLY TO INCOME FROM THE INVESTMENT OF SUCH REVENUES.

"(D) REAL PROPERTY INTEREST CONVEYED, PURSUANT TO THIS CHAPTER, TO A NATIVE INDIVIDUAL, NATIVE GROUP, OR VILLAGE OR REGIONAL CORPORATION WHICH ARE NOT DEVELOPED OR LEASED TO THIRD PARTIES, SHALL BE EXEMPT FROM STATE AND LOCAL REAL PROPERTY TAXES FOR A PERIOD OF TWENTY YEARS AFTER DECEMBER 18, 1971: PROVIDED, THAT MUNICIPAL TAXES, LOCAL REAL PROPERTY TAXES, OR LOCAL ASSESSMENTS MAY BE IMPOSED UPON LEASED OR DEVELOPED REAL PROPERTY WITHIN THE JURISDICTION OF ANY GOVERNMENTAL UNIT UNDER THE LAWS OF THE STATE: PROVIDED FURTHER, THAT EASEMENTS, RIGHTS-OF-WAY, LEASEHOLDS, AND SIMILAR INTERESTS IN SUCH REAL PROPERTY MAY BE TAXED IN ACCORDANCE WITH STATE OR LOCAL LAW. ALL RENTS, ROYALTIES, PROFITS, AND OTHER REVENUES OR PROCEEDS DERIVED FROM SUCH PROPERTY INTERESTS SHALL BE TAXABLE TO THE SAME EXTENT AS SUCH REVENUES OR PROCEEDS ARE TAXABLE WHEN RECEIVED BY A NON-NATIVE INDIVIDUAL OR CORPORATION."

FEDERAL LAW THUS CHARACTERIZES THE INITIAL RECEIPT OF ALASKA NATIVE FUND REVENUES BY A VILLAGE CORPORATION AS A NONTAXABLE EVENT, AND EXEMPTS CERTAIN CLASSES OF REALTY OWNED BY VILLAGE CORPORATIONS FROM LOCAL PROPERTY TAXES FOR A PERIOD OF TWENTY YEARS.

REAL PROPERTY TAX

YOU DO NOT INDICATE WHETHER THE KAWERAK REAL PROPERTY WHICH NOME IS TAXING IS DEVELOPED OR LEASED TO THIRD PARTIES. THE PROPRIETY OF THE REAL PROPERTY TAX, FROM THE PERSPECTIVE OF FEDERAL LAW, DEPENDS ON THE ANSWER TO THIS QUESTION.

UNDER THE FEDERAL ACT, THE CITY OF NOME MAY NOT TAX UNDEVELOPED OR UNLEASED REAL PROPERTY OWNED BY THE VILLAGE CORPORATION UNTIL DECEMBER 18, 1991. HOWEVER, THE CITY MAY TAX LEASED OR DEVELOPED REALTY. FURTHER, ALL "RENTS, ROYALTIES, PROFITS, AND OTHER REVENUES OR PROCEEDS DERIVED FROM SUCH PROPERTY INTERESTS" ARE TAXABLE TO THE SAME EXTENT SUCH REVENUES OR PROCEEDS WOULD BE TAXABLE IF RECEIVED BY A NON-NATIVE INDIVIDUAL OR CORPORATION.

FROM THE PERSPECTIVE OF STATE LAW, THE ALASKA STATUTES PROVIDE THAT FIRST CLASS CITIES WITHIN BOROUGHS MAY LEVY A GENERAL PROPERTY TAX, ALASKA STAT. SEC. 29.53.400, BUT REQUIRE THAT CERTAIN CLASSES OF PROPERTY BE EXEMPTED FROM LOCAL TAXATION. AMONG THE EXEMPTED CLASSES OF PROPERTY ARE MUNICIPAL, STATE, AND FEDERALLY OWNED PROPERTY, AND PROPERTY USED EXCLUSIVELY FOR NONPROFIT RELIGIOUS, CHARITABLE, CEMETERY, HOSPITAL, OR EDUCATIONAL PURPOSES. ALASKA STAT. SEC. 29.53.020.

THE CITY OF NOME HAS DETERMINED THAT KAWERAK IS NOT ELIGIBLE FOR THE EXEMPTIONS FROM TAXATION PROVIDED BY THE STATE STATUTE. AS THIS INVOLVES AN ISSUE OF STATE LAW, WE ARE UNABLE TO QUESTION THIS CONCLUSION.

SALES TAX

THERE IS NOTHING IN THE ALASKA NATIVE CLAIMS SETTLEMENT ACT WHICH EXEMPTS VILLAGE CORPORATIONS FROM PAYING STATE OR LOCAL SALES TAXES, NOR ARE THEY EXEMPT FROM SUCH TAXES UNDER THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION.

ALTHOUGH IT IS WELL ESTABLISHED THAT THE FEDERAL GOVERNMENT IS IMMUNE FROM STATE AND LOCAL TAXATION BY VIRTUE OF THE SUPREMACY CLAUSE, SEE M'CULLOCH V. MARYLAND, 4 WHEAT. 316 (1819), THE ALASKA NATIVE FUND REVENUES DISTRIBUTED TO KAWERAK, INC., DO NOT RETAIN THEIR IDENTITY AS FEDERAL FUNDS AFTER DISTRIBUTION. THE REGIONAL AND VILLAGE CORPORATIONS ARE INCORPORATED UNDER STATE - NOT FEDERAL - LAW, 43 U.S.C. SECS. 1606(D), 1607(A), AND ARE SUBJECT TO FEDERAL SUPERVISION ONLY TO THE LIMITED EXTENT SPECIFICALLY PROVIDED IN THE ACT. AFTER THE FUNDS HAVE BEEN DISTRIBUTED TO THE REGIONAL CORPORATIONS, THEY ARE ESSENTIALLY PRIVATE FUNDS SUBJECT TO THE CONTROL AND DISPOSITION OF THE REGIONAL CORPORATIONS CONSISTENT WITH THEIR CORPORATE BY-LAWS AND ARTICLES OF INCORPORATION, LAWS OF THE STATE OF ALASKA, AND THE ACT. WHEN THESE FUNDS ARE, IN TURN, DISTRIBUTED BY THE REGIONAL CORPORATIONS TO THE VILLAGE CORPORATIONS, THEY REMAIN ESSENTIALLY PRIVATE. THEREFORE, THE VILLAGE CORPORATIONS CANNOT BE DEEMED TO BE AGENCIES OF THE FEDERAL GOVERNMENT, AND THUS THE SUPREMACY CLAUSE DOES NOT PROHIBIT THE IMPOSITION OF STATE AND LOCAL SALES TAX ON THEM.

WITH RESPECT TO STATE LAW, CITIES ARE PERMITTED TO LEVY AND COLLECT A SALES TAX ON SALES, RENTS, AND SERVICES. NOME PERMITS EXEMPTIONS FROM THE SALES TAX FOR SALES MADE DIRECTLY TO A MUNICIPALITY, STATE, OR THE UNITED STATES GOVERNMENT, OR SALES FOR NONPROFIT RELIGIOUS, CHARITABLE, CEMETERY, HOSPITAL, OR EDUCATIONAL PURPOSES. NOME ORDINANCES SEC. 17.05.030(A). HOWEVER, NOME HAS APPARENTLY REFUSED TO EXEMPT KAWERAK FROM ITS SALES TAXES ON ANY OF THESE GROUNDS. AGAIN, WE ARE NOT IN A POSITION TO QUESTION THE EXERCISE OF DISCRETION ON THE PART OF STATE OR LOCAL OFFICIALS BASED ON THEIR OWN LAWS OR ORDINANCES.

WE ACCORDINGLY CONCLUDE THAT FEDERAL LAW DOES NOT PROHIBIT THE IMPOSITION, BY THE CITY OF NOME, ALASKA, OF A MUNICIPAL SALES TAX UPON PURCHASES BY KAWERAK, INC., NOR DOES IT PROHIBIT THE IMPOSITION OF A PROPERTY TAX UPON THOSE REAL PROPERTY INTERESTS CONVEYED TO KAWERAK, INC., WHICH ARE DEVELOPED OR LEASED TO THIRD PARTIES.