



MUNICIPALITY OF ANCHORAGE  
OFFICE OF THE MUNICIPAL ATTORNEY

MEMORANDUM

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**DATE:** November 17, 2003  
**TO:** Assembly Member Anna Fairclough  
**FROM:** Frederick H. Boness, Municipal Attorney *FHB*  
**SUBJECT:** Request Concerning Tax Cap Treatment of LRSA's  
Dept. of Law Matter No. 03-0661

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**QUESTION:** You have requested we address the following question: Are limited road service area tax levies within or outside the tax cap?

**BRIEF ANSWER:** Subject to the following Background and Discussion, our Brief Answer is: When a limited road service area has established a maximum mill rate for levies, the amount that the Assembly levies on behalf of such limited road service areas is outside the tax cap.

**BACKGROUND:**

Service areas are authorized by Anchorage Charter Section 9.01.<sup>1</sup> Limited Road Service areas have a limited existence of three years after which time they cease to exist unless renewed by vote of those voters within the limited road service area.<sup>2</sup>

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<sup>1</sup> Section 9.01. Service areas.

- (a) A service area may be created, altered, or abolished only with the approval of a majority of those voting on the question within the area affected, or, if no qualified voter resides within the area, with the written consent of the owners of all real property within the area affected. However, the assembly, by ordinance may consolidate service areas in which services are provided by the municipality at the same level in each of the areas to be consolidated.
- (b) The assembly by ordinance shall adopt procedures for creating, altering, abolishing and operating service areas. Services provided in a service area shall be financed by a uniform tax levy within the area.
- (c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

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The Anchorage Municipal Charter provision creating a "tax cap" states:

Section 14.03. Tax increase limitation.

- (a) Except as provided in this section, the total amount of municipal tax that can be levied during a fiscal year shall not exceed the total amount approved by the assembly for the preceding year by more than a percentage determined by adding the percentage increase in the Federal Consumer Price Index for Anchorage from the preceding fiscal year plus the average percentage growth or loss in the Anchorage municipal population over the preceding five fiscal years as determined by the state department of community and regional affairs.
- (b) The limitations set forth in subsection (a) do not apply to the following:
- (1) Taxes on new construction or property improvements which occur during the current fiscal year.
  - (2) Taxes required to fund additional services mandated by voter approved ballot issues.
  - (3) Special taxes authorized by voter approved ballot issues.
  - (4) Taxes required to fund the costs of judgments entered against the municipality or to pay principal or interest on bonds, including revenue bonds.
  - (5) Taxes required to fund the cost of an emergency ordinance enacted pursuant to 10.03 of the Municipal Charter.
- (c) Any tax increases which result from the exceptions set forth in subsection (b)(1)--(3) shall be added to the base amount which is used in subsection (a) for the calculations of the subsequent year tax increase limit.

After passage of the above Charter provision by initiative, the Assembly in 1984 enacted an ordinance (AO No. 84-208(S-A)) that "provides guidance and procedures for determining tax revenue available for next fiscal year budget planning purposes and

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<sup>2</sup> AMC 27.10.015 Service area jurisdiction.

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C. Duration of limited road service areas. A limited road service area shall be created only for a limited time, not to exceed three years. The time for commencement and termination of services in such service areas shall be expressed in the ballot proposition establishing the service area. The time for termination may be extended for successive time periods not to exceed three years each and only by a majority of those voting on the question at an election held prior to the termination of the service area.

(AO No. 78-19; AO No. 79-56(S))

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establishes the maximum allowable tax increase amount for the next fiscal year in accordance with Charter Section 14.03." AMC 12.25.010.

This ordinance states in part:

AMC 12.25.040.B Define exclusions in accordance with Charter Section 14.03(b)(2) and the following guidance:

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6. Taxes required to fund services in special service areas already subject to a maximum mill levy amount if citizen authorization to invoke special levies has been granted.

During the November 27, 1984 debate on passage of AO 84-208(S-A) the proper treatment of service area tax levies was discussed. Assemblyman O'Connor proposed an amendment to AO 84-208(S-A) that made clear that "if a lesser mill rate [for a service area] has been the basis of a calculation of the tax limitation under Charter Section 14.03, any increase in the said mill rate up to the specified maximum shall be calculated as an exclusion under the Charter Section 14.03.B.2" November 27, 1984 Transcript at p. 8. He explained that the purpose of this amendment was to allow the "road board" or "rec board" to bring their mill rate up to their maximum without "having to put it all these back on the ballot again and that's why I present it and I think it will just save a lot of problems in the future." Id.

Both Assemblymen Walsh and Brockway responded to Mr. O'Connor that this amendment was unnecessary because section 6 already did the same thing. Assemblyman Brockway explained that "the difficulty I have with some interpretations [of the Charter] is that I foresee for all services areas is having to go to ballot every year for a budget amount, and that is it was my interpretation of Section B6 that we would not have to do that." Id. at 9. Assemblyman O'Connor continued the debate by inquiring of budget analyst Joe Griffith what the intent was behind section B.6. Mr. O'Connor offered a specific example where the service area mill rate was at zero and then the service area board requested it be raised to .5 mill. He asked Mr. Griffith if under subsection B.6 that would be outside the tax cap. Mr. Griffith responded that "That was the intent that I have in writing that its in there that way....the intent was as Mr. Brockway explained, and that is as we discussed on the Saturday morning, the 10<sup>th</sup> to allow the latitude for those special service areas that had already given themselves some special tax with a cap on it to operate without having that influence their overall tax cap." Id. at 10. As a result of Mr. Brockway and Mr. Griffith's explanations of the effect and intent of section B.6, Mr. O'Connor withdrew his amendment.

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In November 2002, Municipal Attorney, William Greene, advised that "LRSA taxes are still part of the taxes aggregated to determine the tax cap. If LRSA taxes are raised, some other function has to take a cut assuming we are at the tax cap in the budget." Email to Vincent Mee dated November 11, 2002.

**DISCUSSION:** It is clear from the Assembly debate that there was no question but that LRSA tax levies were understood to be voter approved taxes that were to be excluded pursuant to section 14.03.B of the Charter but that there was concern about whether the exclusion would apply over multiple years. Obviously what concerned Mr. Brockway, Mr. O'Connor and budget analyst Griffith was the question of whether each LRSA would have to be voted upon yearly in order to achieve the status of being outside the tax cap. Subsection 14.03.B and C when read together say that a tax authorized by a voter approved ballot is outside the tax cap in the year it is approved but that in subsequent years it is added into the base.

Taken literally this would mean that if a LRSA approves a 1 mill levy in year one the dollar amount attributable to the year one levy is outside the tax cap in that year but is added to the base in year 2 and 3. Under the LRSA ordinance a new election must be held in year 3 to authorize continued existence in years 4 through 6. Applying a literal reading of the Charter would mean that the year 4 levy is again outside the tax cap in the first year but added to the base in years 5 and 6. The obvious problem with this approach is that the year 4 levy is not a "new" levy; it is a continuation of the prior levy. This approach would in effect create an expanding base even though there is in fact no increase in the amount being authorized by voters. It appears that AMC 12.25.040.B.6 is an attempt to put a workable and reasonable interpretation upon the Charter provision by placing LRSA levies outside the tax cap. This could also be achieved as Assemblyman Brockway recognized by having each LRSA vote every year instead of every three years. AMC 12.25.040.B.6 is a reasonable interpretation of the Charter provision which avoids both the necessity of an annual vote and the illogical result of escalating the cap even though the voter approved tax burdens are not increased.

**CONCLUSION:** For those LRSA's which have adopted a maximum mill levy, that levy is outside of the tax cap pursuant to AMC 12.25.040.B.6

cc: Mayor Begich