

MEMORANDUM

TO: Mayor Ruby and City Manager Jack Savo
FROM: Samuel C. Severin
RE: Raw Fish Tax
DATE: April 6, 2026



You have asked whether the City's raw fish tax is enforceable and whether it applies to certain situations, such as when a tender is used to deliver fish. As explained in more detail below, the raw fish tax, Chapter 4.21 of the Dillingham Municipal Code, is valid and enforceable. In fact, it may be more broadly applicable than the city envisions.

1. The Annexation Efforts and Related Court Order are Not Relevant.

Planning Director Chris Maines has provided historical research suggesting that the City has not enforced DMC 4.21 due to a belief that the raw fish tax was invalidated by a 2014 court decision. Mr. Maines concluded that the 2014 decision did not impact the City's ability to collect the raw fish tax. He is correct. That Court decision has no bearing on the City's ability to enforce its tax code presently.

In December 2011, the Local Boundary Commission (LBC) approved Dillingham's petition to annex 396 square miles of Nushagak Bay. Voters ratified the annexation in April 2012. The Village of Ekuk appealed the Local Boundary Commission's approval of the City's annexation petition in Case No. 3DI-12-22CI.

The court's March 27, 2014 order reversed the LBC's decision, determining "the Commission abused its discretion in not requiring the City of Dillingham to process its annexation petition according to the legislative review method."

The court order mentioned taxation of raw fish in its factual background of the case, as taxation of raw fish in the annexed area was apparently one of the city's motivations for the annexation. However, the court did not make any substantive decision regarding Dillingham's code. The court's focus was on regulations and statutes governing processes to be followed by the LBC. It would have been inappropriate for the court to make a decision about the tax code; taxation was not before the court.

The only impact on the City's ability to tax is that its boundaries are smaller than they would have been had the annexation been upheld. Otherwise, Case No. 3DI-12-22CI can and should be disregarded in analyzing the applicability of the Dillingham Municipal Code.

2. The “Use Tax” Should not be Overlooked.

The City has asked about a number of fact patterns, including whether fish are delivered by a tender, and whether it matters if the tender is owned or leased. Many of these questions can also be analyzed through the lens of the use tax at DMC 4.21.260, which states, in part:

A. There is levied and shall be collected a use tax equal to the sales tax set out in Section 4.21.020 on the processing, storage, consumption, transportation, or other use of raw fish within the city if such fish has not been the subject of a transaction otherwise taxable under this chapter had the acquisition by the user been a purchase within the city. The tax shall be levied and collected in an amount equal to the rate of levy times the value of the property used.¹

Regardless of where a fish is caught or how it travels to Dillingham, the City is able to tax the value of the raw fish if the processing, storage, consumption, transportation or other use occurs within the city.

Longer-term, the City may consider amending the code to better integrate DMC 4.21.260 with DMC 4.21.020, as it is equally important in determining applicability of city tax on raw fish. This is merely a suggestion for convenience of the city and the public – the code is valid as written.

3. Applicability of Raw Fish Tax to Certain Facts

The memo from Mr. Maines provided a number of hypotheticals. His application of the code to the facts presented is generally correct. Beyond that, we are hesitant to provide hypothetical, fact specific advice at this point. Such advice often results in an

¹The remainder of the section is set forth below:

B. A credit shall be allowed against the tax imposed by this section in an amount that the present user, the user's agent, bailer or donor has paid a sales or use tax or a severance tax with respect to such fish in any other state or political subdivision prior to the use of the fish in the city. The person who processes, stores, consumes, transports, or otherwise uses raw fish subject to taxation under this section is liable for the payment of the tax to the city and shall file a return, obtain a certificate of registration, and remit the taxes due in the same manner and subject to the same requirements for reporting, payment, interest, penalties, inspection of records, enforcement, administration and other applicable provisions of this chapter as are set out for the taxation of sales of raw fish.

C. Under this section, the act of transporting property within the city shall only be considered a taxable use when the property being transported is raw fish caught or harvested within the city by a person who intends to sell the fish to a buyer, irrespective of whether the buyer is located within the city, and irrespective of whether the person transporting such raw fish has an agreement or obligation to sell the raw fish to any particular buyer at the time the transporting of the fish within the city occurs.

ongoing debate regarding whether slightly different facts alter the conclusion. The facts always change – the code governs.

That said, one question was the applicability of the raw fish tax if fish are caught outside city waters, then delivered by a tender to a processor in Dillingham. That is a taxable transaction. The definitions in DMC 4.21.010 guide the analysis. The definition of “sale of raw fish” is broad:

"Sale of raw fish" occurs without regard to whether delivery by the seller occurred directly or indirectly nor whether delivery of the fish occurred inside or outside the city if the fish are purchased for delivery, or are delivered, to a location inside the city at the time of sale. A sale of raw fish occurs within the city if the fish ticket issued by the buyer to the seller for the sale of raw fish is issued within the city. A sale also includes the performance of services within the city without regard to the place of sale of such services, and includes an event that occurs when a person within the city becomes directly or indirectly obligated to sell or convey property within the city, or to perform services within the city or to lease or rent to or permit the use of property within the city by another, including admissions to a place or event.

“Seller” is defined as “a person or entity that has caught raw seafood product and sells it to a buyer.”

Provided other conditions are met, whether the sale is direct or indirect or whether the delivery occurred inside or outside the city is not determinative. Again, the City should bear in mind that if the tax in DMC 4.21.020 does not apply, or its application is challenged, the use tax in DMC 4.21.260 may apply.

Conclusion:

The geographical reach of the City’s tax code was diminished by the 2014 annexation decision. However, the validity of the raw fish tax was not impacted. Provided a sale or use fits the requirements of the code, Dillingham can enforce DMC 4.21. The Alaska Supreme Court has long interpreted the Alaska Constitution to provide municipalities broad taxing authority.² Dillingham is acting pursuant to that authority, like other communities in the region.

There are clarifications and improvements that could be made to the code. Most codes can use a refresh occasionally. It might be prudent to enforce DMC 4.21 for a couple years to better determine where additional clarity is needed. No changes are needed at this time.

² “This broad grant of taxing authority, limited only by other provisions of law, is consistent with the second sentence of Article X, Section 1 which requires that “[a] liberal construction shall be given to the powers of local government.”” Liberati v. Bristol Bay Borough, 584 P.2d 115 (Alaska 1978) (upholding Bristol Bay Borough ordinance imposing a three percent (3%) tax on the sale of all raw fish caught within the borough).