

MEMORANDUM

To: Dan Decker, Acting City Manager, and Anita Fuller, Finance Director
From: Sam Severin & Robert Palmer, MCS, City Attorneys
Re: Validity of tax rate post June 15 deadline
Date: February 17, 2025

You asked for guidance on the validity of Dillingham's 2024 tax rate because Resolution 2024-35 was adopted five days after the June 15 deadline. Consistent with four decades of Alaska law, the imposition of the 2024 tax rate is valid.

Dillingham code, like Alaska statute, requires municipalities to fix the rate of tax levy by June 15.¹ The City fixed the tax rate five days late, on June 20, 2024, with Resolution 2024-35. Some taxpayers have recently sought a refund of 2024 taxes paid because of the five-day delay. Such requests are procedurally untimely, if filed as an assessment appeal, and are substantively defective due to established Alaska law.

A. Procedural defect: Untimely appeal.

Unless a taxpayer files a valuation appeal within 30 days from the notice of assessment and specifies the grounds of appeal, the right to appeal ceases.²

The Dillingham Board of Equalization met on June 4, 2024, and made changes to the tax rolls. Notably, the Board of Equalization considered 26 appeals that day, and those

¹ DMC 4.15.020(B) ("The rate of levy of tax, the date of equalization of the tax, and the date when the taxes shall become delinquent shall be fixed before June 15th of each year by resolution of the council."); AS 29.45.240(b) ("A municipality shall annually determine the rate of levy before June 15.").

² DMC 4.15.125(B) ("No appeal may be taken unless the applicant files with the city clerk written notice of appeal specifying grounds for such appeal within thirty days from the date the assessment notice was mailed."); AS 29.45.190(b) ("The appellant shall, within 30 days after the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form that the board of equalization may require.").

appeals included assessment notices that are dated March 15, 2024.³ Given the uniformity of the March 15, 2024, assessment notices, any 2024 assessment appeal filed in 2025 is untimely because they were required to be filed by April 15, 2024.

Thus, any Assessment Appeal Form filed in 2025 for a 2024 assessment is procedurally defective.

B. Substantive defect: City taxes are lawful despite a five-day delay.

An appeal in 2025 to the Board of Equalization based on the 2024 assessment is substantively defective for two reasons. First, the Board of Equalization hears valuation appeals, not original challenges to annual tax legislation because such legislative activity happened well after the 30-day appeal window for assessment appeals.⁴ Second, and more importantly, the Alaska Supreme Court resolved this very issue four decades ago.

In *City of Yakutat v. Ryman*,⁵ Mr. Ryman asserted that he was entitled to a refund of taxes paid in 1974-1976 because the City of Yakutat failed to comply with the June 15 rate

³ DMC 4.15.070(B) (“Assessment roll and notice—City to prepare and mail. ... B. The city shall mail each person named in the roll a notice of assessment by March 15th or the next business day should the fifteenth fall on a weekend or holiday, pursuant to the provisions of AS 29.45.170.”); AS 29.45.170(b) (“Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.”).

⁴ AS 29.45.500 (describing that if a taxpayer paid under protest, then the taxpayer may bring suit in superior court to recover the taxes with eight percent interest).

⁵ *City of Yakutat v. Ryman*, 654 P.2d 785 (1982). The Alaska Supreme Court declined to follow the attorneys fees analysis in *Ryman* when it decided *Halloran v. State, Div. of Elections*, 115 P.3d 547, 552 n. 17 (Alaska 2005). However, the *Ryman* property tax analysis is still the preeminent authority for determining whether a statute is directory or mandatory. *E.g.*, *S. Anchorage Concerned Coal., Inc. v. Municipality of Anchorage Bd. of Adjustment*, 172 P.3d 768, 772 (Alaska 2007); *Diebold v. Denali Emergency Medicine Associates*, No. 3AN-21-08127 CI, 2022 WL 22864999, at *4 (Alaska Super. Dec. 12, 2022).

of levy deadline. Notably, the City of Yakutat failed to assess or levy taxes for 1974, was nearly 90 days late in levying taxes in 1975, and was nine days late in levying taxes in 1976. “Thus the principal question presented in this appeal is whether the property taxes for 1974, 1975, and 1976 are invalid due to the untimeliness of the City’s assessments and levies.”⁶ The Alaska Supreme Court analyzed the importance of the June 15 deadline, the potential harm to taxpayers, and the potential harm to governments for not being able to collect taxes. After concluding the June 15 deadline is directory and not mandatory, the Alaska Supreme Court said, “we hold that the City’s failure to meet the statutory deadlines does not automatically invalidate its decisions.”⁷

The Alaska Supreme Court then articulated the standard that still applies four decades later:

In our view, when the taxpayer establishes a violation of these “directory” procedures, the burden should be on the taxing authority to demonstrate substantial compliance with the requirements and purposes of the statute. Once a showing of substantial compliance has been made, the taxing authority’s action will be upheld unless the taxpayer is able to demonstrate that the noncompliance resulted in substantial prejudice to his interests. Where the local government’s action fails to meet the substantial compliance test, however, prejudice to the taxpayer will be presumed and the tax or assessment will be overturned.

The Court then concluded Mr. Ryman was entitled to a refund for 1974 & 1975, but not for 1976:

- **1974:** a delay of 15 months was not substantial compliance, and “the 1974 tax was invalid as to Ryman.”⁸

⁶ *Id.* at 789.

⁷ *Id.* at 791.

⁸ *Id.*

- **1975:** a delay of three months was not substantial compliance, and “the 1975 tax was invalid as to Ryman.”⁹
- **1976:** a delay of nine days, or even 20 days, was substantial compliance. “While we are cognizant of Ryman’s frustration at the City’s untimeliness, we do not think that Ryman has made a sufficient showing of prejudice to invalidate the 1976 tax.”¹⁰

Thus, the Alaska Supreme Court has concluded that cities have until at least July 6 to satisfy the substantial compliance standard to impose a tax levy.

Here, the City of Dillingham’s resolution imposing the rate of levy was adopted on June 20, 2024, which is five days after the June 15 deadline. Consistent with the Alaska Supreme Court’s standard, the City of Dillingham has substantially complied with the June 15 deadline and the 2024 taxes are valid.

Therefore, a taxpayer challenging the 2024 imposition of the tax levy is not entitled to a refund for the 2024 taxes paid. The City appreciates that despite being five days late in imposing the rate of levy that nearly all taxpayers upheld their civic duty and paid their taxes.

⁹ *Id.* at 792.

¹⁰ *Id.*