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MEMORANDUM

TO: Tod Larson, City Manager
Dillingham City Council

FROM: Brooks Chandler
City Attorney

DATE: March 16, 2019

RE: Impact of *South Dakota v. Wayfair* on Taxing Sales of Raw Fish

As previously advised, the Supreme Court of the United States disavowed the physical presence rule that has governed collection of sales tax on interstate transactions. The Supreme Court essentially replaced the physical presence rule with the substantial nexus rule. A business with a "substantial nexus" to Alaska measured by the gross value or number of sales made for delivery to Alaska can now be required to collect Dillingham sales tax on items the seller delivers to Dillingham. We have examined how this new rule could apply to Dillingham's tax on sales of raw fish. The raw fish tax is a variation of a traditional sales tax in that the tax is levied on the seller and collected by the buyer.

The current version of the City of Dillingham raw fish tax levies tax based on where the fish ticket is issued by the buyer to the seller. This is the equivalent of the "physical presence" rule. If the Wayfair test was applied to the raw fish tax any buyer (the tax collector) with a "substantial nexus" to Alaska could be required to collect the tax regardless of where the fish ticket was issued on fish purchased for delivery to a point inside Dillingham. This means the fish tax ordinance could be amended to levy fish tax based on the gross value of fish purchased

by the buyer within the State of Alaska rather than where the fish ticket was issued. If these changes were made sales of fish for delivery to a processing plant in Dillingham would be subject to tax. Sales of fish for initial delivery to the dock in Dillingham for processing elsewhere would also be subject to fish tax Sales of fish for delivery to a floating processor or for delivery to a processing plant in Naknek would not be subject to tax.

This presents a potentially difficult policy question for the city council. Permit holders might decide to whom they sold fish based on whether the sale was subject to tax. This would need to be balanced against the city's significant need to expand the existing tax base. We have not prepared a draft ordinance making this change. If you would like us to prepare a draft amendment to the fish tax ordinance let me know.