SALES TAX APPEAL HEARING AGENDA

May 21, 2026 at 10:00 AM

City Hall Room 237 & Zoom Webinar

City Hall Room 237 & Zoom Webinar:
https://juneau.zoom.us/j/88967009403 or Phone 1-253-215-8782 Webinar ID: 889 6700 9403:

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF THE AGENDA

D. EXECUTIVE SESSION

1. Sales Tax Appeal of AEL&P – Hearing Officers Panel Deliberation and Final Decision

E. ADJOURNMENT

ADA accommodations available upon request: Please contact the Clerk's Office 36 hours prior to any meeting so arrangements can be made for closed captioning or sign language interpreter services depending on the meeting format. The Clerk's Office telephone number is (907) 586-5278, e-mail: city.clerk@juneau.gov.

CBJ CLERK

MAR 20 2026

RECEIVED

CITY AND BOROUGH OF JUNEAU, ALASKA
Office of the Municipal Clerk
155 Heritage Way, Juneau, Alaska 99801
Phone (907) 586-5278 FAX (907) 586-4552
City.Clerk@Juneau.gov

NOTICE OF APPEAL – SALES TAX

This form and all required attachments must be submitted to the Clerk's Office (City Hall Room 215) or mailed to the address above within **15 calendar days for appeals involving $500 or less, or 20 calendar days for appeals involving more than $500**, from whichever of the following occurs first:
- the date the Sales Tax Office mailed the decision or action to the appellant; or
- the date the appellant first became aware of the decision or action.

Note: Except as allowed under CBJC 69.05.104(c), appeals must be preceded by payment under written protest.

Name of Business: _Alaska Electric Light and Power Company Phone: _907-759-5960_____
Sales Tax Account Number: ___190003________________________
Appellant's Name: ___Alaska Electric Light and Power Company_____ Phone: __907-759-5960___
Address (mailing):____5601 Tonsgard Ct., Juneau, AK 99801________________________________
e-mail address: ____Alec.Mesdag@aelp.com_________________ Fax (optional): ________________
Do you have a representative for this appeal? ____no __X_ yes *(complete the representative information below)* Representative Name: ___Christopher Walker___________________________________
Address (mailing):__1 Sealaska Plaza, Suite 300, Juneau, AK 99801_________________________
Phone:_907-523-6126_____ Fax: _907-586-3065____ e-mail address: _cwalker@faulknerbanfield.com_

Type of Appeal (check all that apply):

	Penalty and Interest		Audit Results
X	Exempt Sales Interpretation		Filing Requirements
	Ordinance Interpretation		Collection Actions

Total Amount in Dispute: $ $13,830.43
Date Appellant Learned of Decision/Action by Sales Tax Office: March 12, 2026
Date Received by Clerk's Office: 3/20/2026 *(Clerk Use Only)* Clerk's initials: DMC

NOTICE OF APPEAL: Your Notice of Appeal must include:

1. A copy of all relevant sales tax ordinance sections, or a statement of relevant sales tax ordinance sections; a written statement in ordinary and concise language of how the position taken by the Sales Tax Office does not comply with the ordinance, including the particular circumstances, events, or occurrences which show the appellant has complied with the ordinance;
2. If penalties and/or interest are being disputed, a written statement in ordinary and concise language explaining why penalties and/or interest are inappropriate.
3. Any documents supporting the appellant's position; and
4. The signature of the appellant. *(below)*

The Notice of Appeal, with attachments, presents your case to the Hearing Officer Panel. The case must clearly show you have followed the requirements of the Sales Tax Ordinance and what decision you wish the Panel to make. You are entitled to representation before the Panel. ***The Panel may dismiss an appeal if the appellant does not state the grounds upon which relief is requested or provide sufficient supportive documentation. An appeal may also be dismissed if the Panel determines that the matter falls outside the scope of the Panel's authority.***

Date: 03/19/2026 Signature: ______________________

Alec Mesdag, President/CEO

The Municipal Clerk's Office (907) 586-5278 can answer any questions you may have regarding appeal procedures.

F:\Clerk's Office Information\Appeals\Hearing Officers Panel (Est. 2025)\Sales Tax Appeals\2026-03-11_Notice of Appeal - Sales Tax Form.docx

FAULKNER BANFIELD
One Sealaska Plaza, Suite 300
Juneau, Alaska 99801-1245

To: City and Borough of Juneau

From: Christopher J. Walker

Date: March 18, 2026

RE: AELP Appeal of Denial of Sales Tax Exemption

This statement supports the Notice of Appeal – Sales Tax filed by Alaska Electric Light and Power Company ("AELP") with respect to the determination of the Finance Department-Sales Tax Office in its letter to AELP dated March 12, 2026.

Relevant Sections of City and Borough of Juneau Code

- 69.05.010
- 69.05.020(a)
- 69.05.040(32)

Statement of Appellant Regarding Grounds for Appeal

The determination of the Finance Department-Sales Tax Office (the "Department") in its letter to Alaska Electric Light and Power Co. ("AELP") dated March 12, 2026 (the "Determination") is inconsistent with City and Borough of Juneau ("CBJ") Code 69.05.040(32) because it does not follow the language or intent of the Code and applies a standard that is narrower than CBJ Code 69.05.040(32).

The intent of the CBJ sales tax is to tax consumption. It is levied on the "selling price on retail sale" CBJ 69.05.020(a). A retail sale is "any sale of real or tangible personal property." CBJ 69.05.010.

The CBJ sales tax is also intended to exempt the wholesale of raw material, which is embodied in the "altered form" standard of CBJ Code 69.05.040(32). CBJ Code 69.05.040(32) does not limit the exemption to raw materials for typical goods, like lumber for buildings or metal for appliances.

In its publication *Energy Primer: A Handbook of Energy Market Basics*, The Federal Energy Regulatory Commission ("FERC") states (https://www.ferc.gov/media/energy-primer-handbook-energy-market-basics, p33):

> "Electricity is a physical product – the flow of electrical power. It is a secondary energy source, in that it results from the conversion of other energy forms such as natural gas, coal, or uranium, or the energy inherent in wind, sunshine or the flow of water in a river.

Electricity is not visible or directly observable, but it can be turned on and off and measured."

AELP's product, electricity, is subject to sales tax because it is a tangible, physical product. It can be measured and perceived by touch, which AELP strongly cautions against due to the risk of severe harm or death.

AELP's diesel generators do not create this tangible, physical product from nothing, without any raw material. The raw material is the energy content of diesel fuel. As described by FERC, AELP's diesel generators convert the chemical potential energy of diesel fuel into a form of kinetic energy. Because the electrical energy sold by AELP is an altered form of chemical energy stored in diesel fuel, AELP is entitled to an exemption on purchase of the diesel fuel it uses to power generators under CBJ Code 69.05.040(32).

The Determination incorrectly applies guidelines that are narrower than CBJ Code 69.05.040(32), concluding that AELP is not entitled to an exemption because "the diesel fuel itself does not physically enter into or become a component of the electricity." The guidelines are not the law. They are information provided to sellers to help sellers apply CBJ Code 69.05. Still, AELP's purchase of diesel for generation satisfies this standard because the diesel fuel is the only raw material that is traceable and identifiable in the electricity sold to AELP's customers.

In most contexts, the guidelines are useful because they help illustrate a common understanding of the Code. In construction, they distinguish taxable purchases of tools from exempt purchases of lumber that becomes a building. But the guidelines do not require that the product contain the same matter, the same atoms and molecules, in the way that a building contains wood.

In AELP's case, the guidelines could distinguish diesel fuel used to generate electricity from the diesel fuel used in AELP's bucket trucks. The energy content of diesel fuel used in generating electricity is traceable and identifiable in the electricity sold to AELP's customers. This is distinct from the energy content of diesel fuel used in AELP's bucket trucks, which is converted to enable the mechanical operation of the vehicle. This conversion of energy facilitates the delivery of electricity, but none of this energy is present in the electricity sold to customers.

AELP's generators utilize a physical process to convert chemical energy into electrical energy. The electricity may not contain the same atoms and molecules as the diesel, but the energy contained in the electricity cannot be traced to any other physical source. AELP can trace, measure, and identify how much electrical energy is produced from each gallon of diesel. Therefore, even under the guidelines, AELP is entitled to an exemption.

CBJ Code 69.05.040(32) is intended to exempt the purchase of raw material, and it applies here because the energy AELP sells is an altered form of the energy it purchases as diesel. The Determination is incorrect because it interprets the Code to require that the same molecules be present in the finished product, which is a narrower standard. It is inconsistent to find that electricity, which has no mass, is tangible, taxable property but fail to exempt purchase of the chemical energy used as a raw material because its mass is not present in the electricity.

The Hearing Officer Panel should grant AELP an exemption from sales tax on the purchase of diesel fuel used by AELP to power its electrical generators.

BEFORE THE HEARING OFFICER PANEL
OF THE CITY AND BOROUGH OF JUNEAU

In re: Sales Tax Appeal Alaska Electric Light & Power Co., Appellant.	Appeal of: Exempt Sales Interpretation.

HEARING OFFICERS' RECOMMENDATION

I. Procedural History

On March 12, 2026, the City and Borough of Juneau ("CBJ") Finance Department - Sales Tax Office (the "Department") sent a letter to Alaska Electric Light and Power Company (AELP) notifying them that AELP's purchase of diesel fuel to run its generator for electricity generation was not eligible for the sale for resale of tangible personal property exemption from sales tax. AELP filed a timely written appeal with the CBJ Clerk's Office pursuant to CBJ 69.05.180. A prehearing conference was held May 4, 2026. Neither Party requested prehearing briefs. A hearing on the appeal was held May 11, 2026. AELP[1] and the Department[2] participated in the hearing. The Hearing Officers adopt this recommendation and the findings of fact and conclusions of law that support it.

II. Issue

Whether the denial of the sales exemption under CBJAC 69.05.040(32) on the purchase of diesel fuel for AELP's use is consistent with CBJ Code.

III. Summary Recommendation

The Hearing Officers recommend that the Department's decision be set aside. The Hearing Officers believe that since CBJ has not taxed diesel fuel for use by AELP in electricity generation previously[3] that in

[1] Attorney Christopher Walker, Falkner Banfield, and Lori Sowa, PE, VP, Chief Research & Strategy Officer spoke on behalf of AELP.
[2] Assistant Municipal Attorney Clinton Mitchell and CBJ Treasurer Ruth Kostik spoke on behalf of the Department.
[3] As noted in the Findings of Fact and Conclusions of Law section, the time period this fuel use has been exempt is unknown.

order to do so it should clearly specify that fuel purchased for use in electricity generation is subject to sales tax.

IV. Standard of Review

The CBJ sales tax appeal procedures are set out in CBJC 69.05.180, CBJC 01.50.270 and pursuant to Ordinance 2025-17. The Hearing Officers were tasked with conducting a fair and informal appeal hearing and issuing a recommendation to the Manager that contains findings of fact and conclusions of law. The appellant has the burden of proof to establish by a preponderance of the evidence that the Department's decision should be set aside or modified.

V. Findings of Fact and Conclusions of Law

CBJ Code provides for a uniform sales tax to raise revenues. CBJC 69.05.005. The tax shall be levied and collected on the selling price of retail sales and rentals, and services performed within the City and Borough. CBJC 69.05.020(a). The scope of the tax "shall be broadly interpreted and exemptions shall be allowed only when the rental, sales or service clearly falls within an exemption defined in this chapter." CBJC 69.05.005. The tax code provides for exemptions from tax in several transactions including "sales for resale of tangible personal property, as defined in section 69.05.010, to a buyer who holds a valid resale certificate issued by the City and Borough." CBJC 69.05.040(32). The Code defines *Sale for resale* as the sale of tangible personal property to a buyer whose principal business is the resale of the property, whether in the same or an altered form. CBJC 69.05.010.

AELP testified that from 2008 until 2022 they were not taxed on the cost of power adjustment (COPA). In 2008 the Assembly added a temporary exemption from sales tax into code on the cost of power adjustments on electrical power. January 10, 2022, Regular Assembly Meeting Minutes, C. Ordinance 2022-1, Page 22 of 30. That exemption inadvertently remained in the sales tax code until 2022 when it was removed by Ordinance 2022-01. *Id.* at 23-24. Ordinance 2022-01 removed subsection CBJC 69.05.040(43) from code which exempted the sales of cost of power adjustments on electrical power. However, AELP have not been charged tax on the fuel they purchase as part of that electricity generation that creates the COPA. That tax, according to AELP, has been exempted under CBJC 69.05.040(32) as a sale for resale.

Neither party provided the letter that the Department sent to AELP which presumably explained the denial of the exemption under CBJC 69.05.040(32). According to AELP, CBJ has been approving this exemption on their purchase of fuel used for electrical generation. According to the Parties the change in practice came down to interpretation of guidelines used by the Department. AELP contends that these are guidelines to provide interpretation of the law but are not law themselves. The Department testified that AELPs use of the exemption on the purchase of fuel for use in its generators to produce electricity was revealed when the seller of the fuel asked the Department about it.

If AELP is issued a Resale of Goods Exemption Certificate then they are eligible to receive the exemption when they purchase fuel for their generators to convert to electricity to sell. General Guidelines for CBJ Sales Tax Exemptions, Procedure 400. During the hearing neither party explained the details surrounding the exemption, such as the dates it has been applied, how long it has been applied, including when a Resale of Goods Certificate was issued to AELP and for what purpose. In addition, neither party could explain what the amount in dispute of $13,830.43 was for, presumably the cost of the taxes on diesel used by AELP – but for how long, what timeframe, and only for generating electricity or was it also for their other uses of diesel fuel.

Regardless of these details, the Code, or at least the practice of the Department, should be clear that diesel or other fuel used for electricity generation is taxable. We base this decision primarily on the lack of clarity in the process and lack of information presented at the hearing.

Furthermore, there would be no electricity without running diesel in the generators. If AELP had to run on just diesel the rough estimate is $ 50,000 an hour; this also is turned into exhaust gases. AELP starts and runs these generators at least once a month to keep the motors in good health. Diesel is a valuable part of the production of electricity. The 5% sales tax exemption needs a clear code written and followed up on to see if the results have been achieved.

VI. Conclusion

The Hearing Officers find that the CBJ has exempted AELP's purchase of fuel used in electricity generation since at least 2022, if not before that time; that if the CBJ wants to tax fuel purchased for use in electricity generation that it must specifically state that they will tax fuel sold to the utility for that purpose; and that neither party provided sufficient clarity on dates, time periods of the exemptions, or where the amount in dispute came from. For these reasons the Department's decision should be set aside.

DATED this 21st day of May, 2026.

HEARING OFFICER PANEL
CITY AND BOROUGH OF JUNEAU, ALASKA

By: Stephen Sorensen
Chair/Presiding Officer

BEFORE THE HEARING OFFICER PANEL
OF THE CITY AND BOROUGH OF JUNEAU

In re: Sales Tax Appeal Alaska Electric Light & Power Co., Appellant.	Appeal of: Exempt Sales Interpretation

DISSENTING OPINION OF HEARING OFFICER DAVID B. EPSTEIN

I. Introduction

The undersigned Hearing Officer respectfully dissents from the majority recommendation to set aside the Department's decision denying Alaska Electric Light and Power Company ("AELP") a sales tax exemption on its purchases of diesel fuel used to generate electricity. For the reasons set forth below, the current CBJ Sales Tax Code is sufficiently clear on its face to resolve this appeal, the Department's determination is consistent with both the Code and the applicable administrative guidelines, and the exemption should not be allowed. The Department's decision should be affirmed.

II. Standard of Review and the Governing Principle of Narrow Construction

The standard of review and the foundational principle of construction are established by the Code itself. Pursuant to CBJC 69.05.005, "the scope of the tax levied shall be broadly interpreted, and exemptions shall only be allowed when the rental, sales, or service clearly falls within an exemption defined in this chapter."

This is not a preponderance standard, nor a "reasonable argument" standard. The exemption must clearly apply. AELP, as appellant, bears the burden of proof. Rules of Procedure ¶ 5. Where reasonable doubt exists as to whether a transaction falls within an exemption, the tax applies. This principle is not an administrative gloss added by the Department's guidelines; it is enacted law. The narrow construction AELP argues against is the construction the Code expressly requires.

III. Applicable Code Provisions

The relevant exemption is found at CBJC 69.05.040(32), which exempts "sales for resale of tangible personal property" from CBJ sales tax. CBJC 69.05.010 defines "sale for resale" as "the sale of tangible personal property to a buyer whose principal business is the resale of the property, whether in the same or an altered form, and who holds a valid resale certificate issued by the city and borough of Juneau."

The exemption therefore has two components: (1) the purchased property must be tangible personal property, and (2) that same property must be resold by the buyer in the same or an altered form. Both elements must be satisfied. The analysis must follow the purchased property — diesel fuel — and ask what becomes of it.

IV. The Diesel Fuel Does Not Survive Combustion in the Same or an Altered Form

AELP's position is that diesel fuel, as a tangible personal property input, is converted into electricity as an "altered form," and therefore qualifies for the resale exemption. This argument is inconsistent with the physical reality of how a diesel generator operates, and it is inconsistent with the statutory text.

A diesel generator is a two-stage machine: a diesel engine mechanically coupled to an electrical alternator. In the engine, diesel fuel is injected into a cylinder and ignited by compression. Combustion converts the fuel's chemical energy into heat and mechanical force exerted upon a piston. That force rotates a crankshaft. The crankshaft drives the rotor of the alternator, inducing electrical current in the stator windings by electromagnetic induction. The combusted fuel exits entirely as exhaust gases — carbon dioxide, water vapor, and nitrogen oxides — vented to the atmosphere.

The diesel fuel's career as tangible personal property ends at the point of combustion. What exits the combustion process is not the diesel fuel in any form. It is heat, exhaust gases, and mechanical force on a piston. None of those outputs constitute the diesel fuel in the same or an altered form. The tangible personal property has been consumed and destroyed. There is nothing left of it to resell.

The electricity produced by the alternator is not the diesel fuel in an altered form. It is the product of a separate and independent physical phenomenon — electromagnetic induction — that would operate identically regardless of what motive source is turning the rotor. An alternator driven by a wind turbine, a water wheel, a gasoline engine, or a steam turbine produces electricity indistinguishable from that produced by a diesel engine. The electricity is not traceable to the diesel as a matter of physical identity; it is traceable only to the rotational energy imparted by the crankshaft, which is itself the product of combustion, not of the diesel fuel as a substance.

AELP argues that the energy content of the diesel is traceable and identifiable in the electricity produced, in that a known quantity of electrical energy corresponds to each gallon of fuel consumed. This is a statement about energy accounting, not about tangible personal property. The Code does not define "sale for resale" to mean the sale of property whose energy value is traceable to a purchased input. It requires that the property itself — the tangible personal property — be resold in the same or an altered form. Energy is not property under this Code. It has no independent legal existence as a thing that can be purchased, exempted, or resold.

Accordingly, there is no direct nexus between the diesel fuel and the electricity produced. The diesel's product — the only output directly attributable to the fuel itself — is heat, exhaust, and mechanical work on the piston. The fuel does not "come out the other end" in any form cognizable under CBJC 69.05.010. The requirements of the resale exemption are not met.

V. The Administrative Guidelines Support Denial of the Exemption

The CBJ administrative guidelines implementing CBJC 69.05.040(32) explicitly identify "fuel used to operate equipment used in manufacturing or processing" as a taxable item not eligible for the resale exemption. AELP argues that these guidelines are narrower than the Code and should not be applied. This argument misreads both the guidelines and the Code.

The guidelines do not contradict the Code; they implement it. The physical analysis in Section IV above demonstrates that the diesel fuel is consumed in operating the generation equipment. That is precisely what the guidelines address. Diesel in a generator is not meaningfully distinguishable from diesel used to heat a kiln or power an industrial compressor: in every case, the fuel is combusted, the fuel is consumed, and nothing of the fuel survives in the finished product.

Moreover, even if the guidelines were considered narrower than the Code in some respect, that would not assist AELP here. The Code's own "clearly falls within" standard requires that the exemption be unambiguous. A novel theory of energy traceability that requires overriding administrative guidelines and crossing a combustion boundary does not clearly fall within any exemption. Under CBJC 69.05.005, ambiguity resolves in favor of the tax.

VI. Past Administrative Practice Is Not Controlling

The majority's recommendation rests substantially on the fact that CBJ did not historically tax AELP's diesel fuel purchases, and that if CBJ wishes to tax such purchases going forward it must more clearly say so. The dissent respectfully disagrees with this reasoning on both factual and legal grounds.

As a factual matter, the record reflects that the exemption certificate covering petroleum products was issued in error and has since been corrected by the Department. An exemption applied in error creates no vested entitlement to its continuation. The history of erroneous non-taxation is not a basis for perpetuating an exemption that the Code does not authorize.

As a legal matter, the task of this Panel is to determine what the current Code requires — not to audit the Department's historical consistency. The Code is what it is today. Past practice, whatever it may have been and for whatever period, cannot enlarge an exemption that the Code does not provide. If AELP believes the fuel should be exempt, the appropriate remedy is to seek a legislative amendment explicitly exempting diesel fuel used in electricity generation — not to ask this Panel to read such an exemption into a provision that does not contain it.

The dissent also notes that the majority's suggestion that CBJ must "clearly specify" that such fuel is taxable inverts the Code's construction mandate. Taxation is the default; exemption is the exception, and it must be clear. It is not CBJ's burden to affirmatively state that every non-exempt transaction is taxable. It is AELP's burden to demonstrate that a clear exemption applies. AELP has not met that burden.

VII. Conclusion

The current CBJ Sales Tax Code is sufficiently clear to resolve this appeal without resort to historical practice, policy considerations, or speculation about the motivations of the parties.

The diesel fuel AELP purchases to generate electricity is consumed in the combustion process of the diesel engine. It does not emerge from that process in the same or altered form — it is converted to exhaust gases, heat, and mechanical force, none of which constitute the diesel fuel as tangible personal property. The electricity subsequently produced by the alternator is not an altered form of the diesel fuel; it is the product of electromagnetic induction, a physical phenomenon entirely separate from the combustion of the fuel.

Because the diesel fuel does not satisfy the requirements of CBJC 69.05.010, the resale exemption under CBJC 69.05.040(32) does not clearly apply. Under the mandatory narrow construction standard of CBJC 69.05.005, the tax must be upheld. The Department's decision should be affirmed. If the CBJ Assembly wishes to exempt diesel fuel used in electricity generation from sales tax, it may do so by enacting a specific exemption to that effect.

For the foregoing reasons, the undersigned respectfully dissents from the majority's recommendation.

DATED this 15th day of May, 2026.

David B. Epstein

Digitally signed by David B. Epstein
Date: 2026.05.15 16:06:38 -08'00'

David B. Epstein
Hearing Officer, Dissenting
City and Borough of Juneau, Alaska

Office of the City Manager
155 Heritage Way
Juneau, Alaska 99801
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Managers_Office@juneau.gov

Date: June 3, 2026

To: Breckan Hendricks, City Clerk

From: Robert Barr, Deputy City Manager

Re: AEL&P Sales Tax Appeal - City Manager Decision

On May 21st a panel of three hearing officers issued a recommendation to continue a sales tax exemption for diesel fuel sold to Alaska Electric Light & Power (the appellant) and recommended rejecting the interpretation of the CBJ Sales Tax Code by the CBJ Treasurer to require the appellant pay sales tax on said fuel. CBJC 01.50.270(f) provides ten working days for the Manager to either a) accept the recommendation, b) reject the recommendation and issue an independent decision, or c) remand to the hearing officers for additional findings. This memo serves to reject the recommendation and concurs with the initial interpretation of the Treasurer - current code does not exempt diesel fuel purchases by the appellant.

One of the three hearing officers dissented; this decision largely conforms to the argument laid out in that dissent. Specifically:

- CBJC 69.05.005 provides, "the scope of the tax levied shall be broadly interpreted, and exemptions shall only be allowed when the rental, sales, or service ***clearly*** falls within an exemption defined this chapter." (emphasis added)
- This provision must be understood within the context of CBJC 69.05.040(32) and CBJC 69.05.010. The former provides for the exemption relevant in this circumstance, "sales for resale of tangible personal property" and the latter defines "sale for resale" as "the sale of tangible personal property to a buyer whose principal business is the resale of the property, whether in the same or an altered form."

The appellant argues the diesel fuel it purchases is an altered form of the electricity it sells and is therefore exempt under the resale exemption. The concept of altered form requires continuity of the tangible property of that which is being sold. The "tangible personal property" of diesel fuel ends once it is combusted. Nothing tangible remains post combustion at the point of time when energy, in the form of electricity, is sold to a customer. The appellant argues the potential energy in the diesel fuel itself is resold as electricity. This interpretation a) fails to meet the **clearly** threshold laid out in 69.05.005 and b) would represent a sweeping change in resale interpretation which would require CBJ to exempt virtually all inputs whose energy content or work potential contributes to finished products to remain consistent. This interpretation also does not conform to existing legal understanding. The Department provided numerous legal cases and citations during the hearing that support its interpretation and undermine that of the appellant. The majority opinion failed to address these arguments.

For illustration, examples of clearly eligible sales for resale exemptions include:

- A restaurant that sells pizza purchases flour and other ingredients to make pizza. Those ingredients are exempt as resale, since they are an identifiable part of the pizza being sold. The firewood (or other fuel) used to cook the pizza is not exempt.
- A fuel oil business purchasing fuel oil wholesale that is resold to heat homes and businesses - the initial wholesale purchase is exempt.

The majority opinion additionally relied on the argument that because the appellant has not been charged sales tax in the past, it should not be charged in the future. This fails a basic public purpose test: when a government determines that its laws or regulations have not been properly followed, it is in the public's interest for the government to correct that error.

Per 69.05.005, the exemption must clearly apply. The appellant's argument and the recommendation of two of the three hearing officers rely on "a novel theory of energy traceability that requires overriding administrative guidelines and crossing a combustion barrier [which] does not clearly fall within any exemption" (Epstein dissent, May 15, 2026). The recommendation is rejected and decision of the Department upheld.

The dissent helpfully provides an appropriate path forward for the appellant: legislative action, providing for a new sales tax exemption that specifically and narrowly exempts diesel fuel when it is used in energy generation. Legislative action of this sort puts the public purpose analysis (e.g. weighing one exemption against others; determining the public purpose of exemptions for for-profit companies) appropriately in the hands of elected officials rather than staff or appointed hearing officers.

Robert Barr
Deputy City Manager
City & Borough of Juneau, Alaska
(907) 586-5240