September 30, 2008

The Honorable Sarah Palin  
Governor of Alaska  
1140 West Parks Highway  
Wasilla, Alaska 99654

Dear Governor Palin:

I have been asked to review you and your husband’s joint federal income tax returns and W-2s for 2006 and 2007 and provide my legal opinion on your reliance on the W-2s provided by the State of Alaska to you for those two years. Attached is a letter that reviews the situation and provides my legal opinion on the circumstances.

Sincerely,

Roger M. Olsen

Attachment
September 30, 2008

To Whom It May Concern:

This letter is a review of Governor Sarah Palin and Todd Palin’s joint federal income tax returns and W-2s for 2006 and 2007. It provides my legal opinion on the Palin’s reliance on the W-2s provided by the State of Alaska to them for those two years. Governor Sarah Palin reported on her income tax returns for 2006 and 2007 all (100%) of the income from her W-2s, plus additional business income she received. H & R Block prepared both of their 2006 and 2007 income tax returns.

Governor Palin became an employee of the State of Alaska when she was elected as Governor of Alaska in 2006. She received a salary and, as with all State of Alaska employees, her wages were subject to withholding taxes (income taxes, social security taxes & Medicare taxes). As her employer, the State of Alaska prepared a W-2 for Governor Palin in each year that the State of Alaska electronically reported directly to the IRS. When the Palins filed their income tax returns with the IRS, the employee’s copies of the W-2s were also filed with the IRS.

For many years, including 2006 & 2007, the State of Alaska has had a program that provides a daily allowance for meals and incidental expenses and, where appropriate, travel expenses to state employees when they are traveling on state business away from their duty station. Under State of Alaska law and regulation, each state employee has a duty station for employment purposes, and in her case, that duty station would therefore be considered her “tax home” for federal tax purposes. When an individual employee conducts business on behalf of the State of Alaska away from that duty station, the employee is paid by the State this daily amount of $60.00. This daily amount is a meals and incidental expenses (“M & IE”) allowance, and does not include lodging. This amount is reduced by any meals received as part of official duties. This program is administered on an identical basis for all of its employees and each employee is entitled to this exact same flat amount on a daily basis during their business travel away from their duty station. As Governor, Sarah Palin was one of those employees. Under State law, her duty station was Juneau, the state capitol of Alaska. Juneau is approximately 900 miles from Anchorage. Governor Palin’s family residence is in Wasilla, approximately 40 miles from Anchorage, where her husband and children live.
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On days when Governor Palin conducted business for the State of Alaska outside of Juneau, she was entitled to this $60.00 payment per day. On a number of days when she did not conduct official State business, but was outside Juneau, she did not receive any per diem payments from the State. When she was in Juneau at her duty station, she did not receive this per diem.

As Governor, Sarah Palin frequently conducted official State of Alaska business from the Governor’s office in Anchorage. Anchorage is not only by far the largest city in the state, but it is the commercial center of Alaska. The state has therefore placed numerous state offices there, and conducts much of its business there. Indeed, in recent years it has been suggested that the state should move the official Capitol to Anchorage given its predominant role in commerce and business. Accordingly, much of Governor Palin’s work when the legislature is out of session takes place either in the Governor’s office in Anchorage, or in the smaller Governor’s office in Fairbanks.

Additionally, Governor Palin spends considerable time traveling to smaller communities, and works at home when she is actually in Wasilla. When working in Anchorage, she usually stays at her family home in Wasilla, forty miles from her office, without charge to the state, even though she was entitled to request that the state pay for a hotel or apartment in Anchorage (as it has done for previous governors). In my opinion, spending the night at her family home while in Anchorage on State business, or working from that home, does not affect the tax characterization of the per diem payments she receives while on state business away from her Juneau duty station. This is because she is entitled to meal and incidental allowance payments when away from her duty station and tax home performing services for her employer; it is not relevant that she spends the night at her family home rather than in government-paid lodging.

The State of Alaska has determined that State payments to its employees who are traveling on state business away from their duty stations are not taxable fringe benefits to the employee. Thus, the State of Alaska has not reported such per diem amounts on any of its employee’s W-2 as additional income (since they are only given to employees for such business travel). Governor Palin was one such employee. The State of Alaska treated such expenses as incurred on behalf of the State of Alaska and not subject to federal income taxes. No special consideration was ever given to Governor Palin, notwithstanding that she was the Governor of Alaska.
Federal law is clear that every employer has the legal duty and obligation to determine whether payments made to its employees constitute taxable income. This includes the State of Alaska. In this case, the State of Alaska has regularly reviewed its duty station reimbursement program and determined that these reimbursements do not constitute taxable income. Governor Palin did not participate in that original decision, or its review process. For years, employees of the State of Alaska who received their W-2 have relied upon the State for this determination. Governor Palin was no different. She relied upon the State as well. I am not aware of any irregularity in the administration of the State of Alaska’s duty station reimbursement program. Nor did I find any facts or circumstances that would lead me to conclude differently. Unless employees have reason to know that the W-2 is incorrect, the IRS expects employees to rely on the employer’s W-2 as prepared & filed with the IRS, as Governor Palin did. The income tax aspects of fringe benefits are complex and highly technical, and not subject to second-guessing by laymen. The State of Alaska is confident that its position is correct. Its employees were entitled to rely on that determination. So was Governor Palin.

Finally, under State law, the spouse of the Governor (or other family members on occasion) is entitled to payment of travel costs by the state when conducting official State business. I find no reason or rule of law that would lead me to a different conclusion as to his receipt of such State payments. Such payments for family members traveling on state business would not properly be included as taxable income on Governor Palin’s federal tax returns.

Yours truly,

Roger Olsen