



AGENDA ITEM N10

## KENAI PENINSULA BOROUGH

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### MEMORANDUM

DALE BAGLEY  
MAYOR

**TO:** Gary Superman, Assembly President  
Members, Kenai Peninsula Borough Assembly

**FROM:** *DB* Dale Bagley, Mayor

**DATE:** November 16, 2004

**SUBJECT:** Ordinance 2004-36, amending KPB 5.18.430 regarding sales tax computation

This amendment would apply the tax cap to attorney services for a single matter where the services are provided for a period of longer than one month.

► In Section 1, amend KPB 5.18.430(B) as follows:

B. **Except as provided below for services provided by attorneys, [S]services provided on account and billed to the customer on a periodic basis are subject to application of the tax on a maximum of [\$500.00] \$1,000.00 of each billing, per account. For purposes of this section, any advance payment for services other than to a trust or escrow account is considered to be paid pursuant to a "billing."**

► In Section 1, add a new KPB 5.18.430(E) as follows:

E. **Services provided on account by attorneys for a single legal matter shall be treated as one transaction per year, and per fractional year, for the length of time that services are provided regarding the single matter. The tax paid for any fraction of a year shall equal the tax paid for a whole year. The sales tax for the entire matter for each year shall be due and collected at the time of the first billings each year for that matter until the cap is reached. For purposes of this section, the term "legal matter" refers to a single subject or claim for which an attorney provides legal advice and/or representation for each client who is billed separately by the attorney.**

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Table 1 illustrates the revenue reduction from a rental exemption:

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Table 1:

<b>Jurisdiction</b>	<b>Rent Exemption City</b>	<b>Rent Exemption Borough</b>	<b>Total Rent Exemption</b>
Homer	\$91,315	\$52,180	\$143,495
Kenai	\$117,723	\$78,482	\$196,205
Seldovia	\$658	\$342	\$1,000
Seward	\$37,782	\$25,188	\$62,970
Soldotna	\$70,768	\$47,178	\$117,946
Borough (Outside Cities)	\$-0-	\$109,468	\$109,468
	\$318,246	\$312,838	\$631,084

Table 2 illustrates the net revenue increase from a maximum tax computation increase with a rental exemption:

Table 2:

<b>Jurisdiction</b>	<b>Net Revenue Increase City</b>	<b>Net Revenue Increase Borough</b>	<b>Net Revenue Increase Total</b>
Homer	\$191,471	\$109,415	\$300,886
Kenai	\$157,538	\$105,025	\$262,563
Seldovia	\$7,820	\$4,110	\$11,930
Seward	\$143,962	\$65,548	\$209,510
Soldotna	\$181,415	\$120,944	\$302,359
Borough (Outside Cities)	\$-0-	\$1,242,053	\$1,242,053
	\$682,206	\$1,647,095	\$2,329,301

rather than as an accumulation, sum, or aggregation of prices of separate identifiable or separable unit prices as defined above. For purposes of package tours, every individual in the tour will count as a single unit. For purposes of harbor fees and port dockage, each foot or other measurement of length will count as a single unit.

(8) Travel and adventure services include, but are not limited to, tours and charters on land and water, guide services, admissions, lectures, transportation services (excluding air transportation), and the rental of lodging, aircraft, vehicles, watercraft, and equipment, including fishing, boating, camping and other tour or adventure related goods. Travel and adventure services also include sales of goods incidental or related to such services. Regardless of the location of any marketing, brokering, packaging, re-sale, assignment, or other arrangement and regardless of the beginning or ending of any other related services the point of delivery of a travel and adventure service is within the city if the ultimate consumer of the travel and adventure service receives any such service which begins, ends, or occurs, as described in (c) of subsection (3) above. (Ord. 1433 §1, 2000; Ord. 1335 §1, 1996; Ord. 1230, 1992; Ord. 1096 §1, 1986; Ord. 1063 §1, 2, 1985; Ord. 984 §1 and 2, 1982; Ord. 892 §2, 1978; Ord. 870 §2(part), 1977)

**3.04.011 Delivery charges.** (a) Delivery Charges. Delivery charges for services rendered for delivery of any personal property, goods or materials which delivery services both commence and terminate within the city are subject to sales taxes.

(b) Definition. "Delivery charges" means and includes any costs or charges imposed on the sale of freight services, shipping services, courier services, wharfage services, postal services, excepting postal delivery services rendered by the United States postal service, and any other services related to the delivery or transportation of any personal property, goods or materials of any nature whatsoever. (Ord. 984 §3, 1982)

**3.04.012 Employees/subcontractors—Sale of services.** (a) The remuneration paid by an employer in the form of wages or salary to an employee for the sale of services by such employee to the employer are not taxable under the provisions of this chapter. Sales of services by contractors, or subcontractors, and any other type of sale of a service by a person other than an employee are taxable unless specifically exempted.

(b) A person shall be deemed to be an employee under the provisions of this chapter if the person claiming to be at employer is withholding a portion of such person's wages or salary in accordance with federal income tax laws and regulations. In the event no amounts are being withheld, it shall be presumed such person is not an employee unless the person claiming to be his employer submits clear and convincing evidence establishing the person's status as an employee. (Ord. 984 §4, 1982)

\* **3.04.013 Multijurisdictional services.** (a) All services which either commence or terminate within the city, or which are in any part rendered, supplied or provided within the city, shall be-subject to sales tax, except as otherwise provided in this chapter.

(b) Notwithstanding any other provision herein, air or sea charter services provided by a person in the business of providing such charter services which do not both commence and terminate within the city are exempt from sales tax. (Ord. 984 §5, 1982)

**3.04.020 Levy.** There is levied, and the revenue collector shall collect, a three and one-half percent sales tax upon all rents, retail sales and services in the city except those specifically exempted from the tax by this chapter. (Ord. 1095 §1, 1986; Ord. 870 §2(part), 1977)

**3.04.030 Duty of seller to collect.** The tax levied under the provisions of this chapter is primarily upon the buyers of the personal property, rentals, or services, but the tax is payable to the

AGENDA ITEM *N.10* — **KENAI PENINSULA BAR ASSOCIATION**  
 AN ASSOCIATION OF ATTORNEYS ACROSS THE KENAI PENINSULA BOROUGH

TO: Kenai Peninsula Borough Assembly  
 FROM: Jim Butler, President-Pro Tem  
 DATE: November 15, 2004  
 SUBJECT: Kenai Peninsula Borough ORDINANCE 2004-36  
 OPPOSITION TO ADOPT / REQUEST TO TABLE

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At their regularly scheduled meeting on November 5, 2004, the Kenai Peninsula Bar Association considered KPB Ordinance 2004-36. The discussion among members included a debate on sales tax equity, current exemptions to sales tax, concerns related to application and a desire to support important KPB services. Based on that discussion, I was asked to convey the KP Bar Association's *opposition to the proposed ordinance* along with the general position of the local bar. I am sorry that a scheduled conflict will prevent me from attending your meeting scheduled for November 16, 2004.

*Exemptions:* It is understood that the increase in the sales tax cap is due, in part, to the concern that the tax cap has not been raised since its inception in 1965. While true, this review fails to consider the number of exemptions that have been granted since the sales tax was originally adopted. The list of exemptions is considerable and results in a shift of sales tax responsibilities to a small group of transactions. Further, raising the current tax level and failing to review exemptions now will make addressing the application of exemptions even more difficult in the future because the impact will be greater at the proposed rate than at the current rate.

*Out-of-Area Businesses:* It was also pointed out that attorneys who practice in the KPB but are based out of the borough do not collect the sales tax — even if the client is a local KPB resident. This means a local attorney collects the tax on their billings but the out-of-area attorney does not. We would like to encourage the KPB to review how the City of Ketchikan has resolved this issue and now captures activity within their jurisdiction by businesses located out of the area.

*New Revenues Forecasted:* The Bar Association recognizes many of the reduced revenue scenarios challenging local governments throughout the Kenai Peninsula Borough. This shrinking revenue environment makes revenue enhancement steps all the more important to consider carefully. In light of new State education funding and municipal assistance forecasts, there is ample time to carefully consider the impact on local businesses and consumers of raising the sales tax cap. In fact, raising the sales tax cap now, prior to the Alaska Legislature's decision on education funding and municipal revenue sharing, may jeopardize a more reasonable allocation to the Kenai Peninsula Borough.

In light of the foregoing, the Bar respectfully requests:

1. Table action on the ordinance, pending a review of sales tax exemptions to move toward sales tax equity.
2. Consider applying the responsibility to collect the tax on service providers who practice law on the Kenai Peninsula but are based outside the borough.
3. Wait until the Legislature has acted on the Governor's request for additional education funding, and on municipal revenue sharing, to see what the Borough's actual revenue situation will be for FY 2006, before raising the sales tax cap.

The Bar Association understands the growing need to review revenue enhancement options and would welcome the opportunity to work with the Assembly on any efforts to consider more equitable options for assessing sales taxes across the Kenai Peninsula Borough.

AGENDA ITEM 1.10**Blankenship, Johni**

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**From:** Patrick Cowan [birchridgegolf@msn.com]  
**Sent:** Tuesday, November 16, 2004 2:47 PM  
**To:** Dan Johni Blankenship  
**Subject:** Fw: Kenai Peninsula Ordinance 2004-36

Mrs. Blankenship, please include a copy of this email in the Assembly Packet for tomorrow nights meeting. For the record, Pete Sprague was the only assembly person that replied to this email. I also had the opportunity to discuss the matter with Dan Chay.  
 Thank You, Pat Cowan

----- Original Message -----

**From:** Patrick Cowan

**To:** [dbagley@borough.kenai.ak.us](mailto:dbagley@borough.kenai.ak.us) ; [chay@alaska.com](mailto:chay@alaska.com) ; [bjg@alaska.net](mailto:bjg@alaska.net) ; [gsuperman@gci.net](mailto:gsuperman@gci.net) ; [psprague@acsalaska.net](mailto:psprague@acsalaska.net) ; [rlms@ptialaska.net](mailto:rlms@ptialaska.net) ; [akjfisher@hotmail.com](mailto:akjfisher@hotmail.com) ; [cmos@xyz.net](mailto:cmos@xyz.net) ; [millimom@xyz.net](mailto:millimom@xyz.net)

**Sent:** Thursday, November 11, 2004 3:50 PM

**Subject:** Kenai Peninsula Ordinance 2004-36

Ladies and Gentlemen of the Kenai Borough Assembly,

This email is to strongly oppose the proposed ordinance listed above.

Today, I can compete with Anchorage Golf Retailers by simply reducing the price of my golf clubs in the \$500.00 to \$1500.00 range by \$25.00 and even though that reduces my margin down to less than suggested levels, it allows me to compete, hopefully keeps the golfers playing golf at Birch Ridge and does in fact allow the Kenai Peninsula Borough \$25.00 in sales tax revenue on each of those sales. I also can compete with catalog and internet companies as the freight they charge and the Sales Tax charged the customer approximately offset.

If in fact, however, you approve the above ordinance, I will not be able to reduce my margin by another \$25.00, therefore my customers, who are very cost conscious about golf club prices will either go to Anchorage where there is no Sales Tax or Purchase the Golf Clubs off the internet, where there is also no Sales Tax. In either of the above mentioned events, the Kenai Peninsula Borough will receive **no Sales tax revenue.**

It seems to me that Kenai Peninsula Borough Assembly, who are supposedly representing all the citizens of the Kenai Peninsula including the small Mom & Pop businesses who not only collect and pay sales tax, but also Real Estate Taxes should be protected by those representatives from our competitors, i.e.; Anchorage and the Internet. Further it seems to this writer, that if your main objective is to increase sales tax revenue that you would be much better off to figure out a way to capture sales tax revenue from internet sales where the products are actually delivered to the Kenai Peninsula Borough Residents.

In closing, I would like to let you know that my Wife and I are 36 year Alaskan Residents and have owned, managed or operated small businesses on the Kenai Peninsula for 29 of those 36 years and this is the first time I have ever requested help from the Borough Assembly.

Please consider my plea and do what is right for the small businesses of the Kenai Peninsula Borough.

Pat Cowan, President, Birch Ridge Golf Course, Inc.

11/16/2004

**Fred Sturman  
PO Box 513  
Soldotna, Alaska**

**November 11, 2004**

**Dear Borough Assembly:**

**Last year you placed a real property tax exemption increase on the ballot which passed by a wide margin. When discussing this ballot proposition you knew there would be a \$1 million loss in tax revenue to the borough. This tax revenue shortfall when coupled with your spending \$10 million more than revenue over the past 4 years while failing to cut the size and cost of borough government did nothing but aggravate an already bad fiscal situation. It seems the only solution being offered to your chronic over spending problem is to raise taxes.**

**Instead you should give the additional \$10 thousand property tax exemption promised to voters, forget about driving major purchases to Anchorage, and the poor people renting a place to live deeper into poverty. You can accomplish this by cutting at least \$5 million worth of fat out of your budget. If you want some help with the latter suggestion, I would be more than happy to assist.**

**Bottom line... get your fiscal house in order before you come to me for more money!**

**Sincerely,**



**Fred Sturman  
Soldotna**

