

ORDINANCE CERTIFICATION

I certify that upon final enactment of Ordinance No. 81-43 of the Kenai Peninsula borough, this certification of the actions taken by me conforms with the rules and regulations governing ordinances.

1. Publication: Publication has been made by causing a summary of this ordinance to be inserted one time in a newspaper of general circulation in the borough. One copy of this ordinance as set for hearing, together with Notice of Hearing has been mailed to the city clerks of each first class city in the borough and to each postoffice in the borough with a request for posting on the City Hall and Post Office bulletin boards for 10 days immediately following receipt.
2. After adoption of this ordinance, one copy will be mailed to the city clerk of each first class city in the borough.

This ordinance was enacted by the assembly of the Kenai Peninsula Borough on the 16 day of June, 1980 and will become effective immediately.

Francis Byrnes
Borough Clerk

Date:

Introduced by: Mayor
Date: May 5, 1981
Hearing: June 16, 1981
Vote: 11 Yes; 1 Abst.
Action: Enacted

KENAI PENINSULA BOROUGH

ORDINANCE 81-43
(Substitute)

REENACTING SECTION 5.16.260 OF THE BOROUGH CODE OF ORDINANCES TO CLARIFY THE MAXIMUM PENALTY FOR DELINQUENT SALES TAX ACCOUNTS.

WHEREAS, the Borough levies and collects a sales tax on all taxable sales made within its boundaries, pursuant to AS 29.53.415 and Chapter 5.16 of the Borough Code; and

WHEREAS, the Borough also collects sales taxes levied by the cities; and

WHEREAS, it is desirable that the Borough Code be amended from time to time to simplify and consolidate its provisions; and

WHEREAS, the current maximum penalties provided by the Code for sales tax delinquencies are confusing because the Code provides that the maximum penalty shall be either 25% or \$300 per quarter, whichever amount is higher; and

WHEREAS, application of the higher \$300 maximum penalty exacts a proportionately severe penalty against small businesses remitting relatively small amounts of sales tax because the \$300 maximum penalty represents, as an example a 150% penalty upon a \$200 delinquency; and

WHEREAS, the Assembly desires that the sales tax penalty provisions of the Borough Code should be uniform and fair;

NOW THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That Section 5.16.260 of the Borough Code is repealed and re-enacted to read:

5.16.260 Unlawful Acts - Civil Penalties -- Loss of Records. A. Failure to obtain certificate of registration: A seller who is required to obtain a certificate of registration, but fails to do so within the time prescribed is subject to a civil penalty equal to 50% of the amount of any tax

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found to be due in addition to payment of the actual amount of taxes.

B. Failure to file return: A seller who fails to file a return within the time required by this chapter, or who fails to remit all taxes collected by him, or later found to be due, is subject to a civil penalty of 5% per month of the amount of taxes found to be due, to a maximum of 25%. The filing of an incomplete return, or the failure to remit all taxes, is the equivalent of filing no return.

C. Estimation of tax due: In the event that the Borough is unable to ascertain the amount of tax due from a seller because the seller has failed to keep accurate records, to allow inspection of records, has failed to file a return or has falsified records, then the Borough shall estimate the tax due based upon any information available to it. The estimate shall become final for the purpose of determining liability of the seller in 30 days unless the seller earlier files an accurate return indicating a lesser liability or unless a greater liability is shown upon audit.

D. Penalties provided by city sales tax ordinances shall be enforced by the Borough in the same manner as the penalties imposed by this Borough ordinance.

E. Maintenance of suits: Nothing in this chapter shall be construed as preventing the Borough from filing and maintaining an action at law to recover any taxes due from a seller in addition to any penalty assessed.

F. A seller shall immediately notify the Borough of any fire, theft or other casualty which prevents his compliance with this chapter. The casualty constitutes a defense to any penalty provided in this chapter, but does not excuse the seller from liability for taxes due. Accidental loss of funds or records is not a defense.

Section 2. That Section 5.16.300 of the Borough Code is amended to read:

5.16.300 Unlawful Acts - Criminal Penalties Imposed When. A. Each of the following acts, when

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intentional, constitutes a misdemeanor and is punishable by imprisonment for up to 30 days and by a fine (UP TO \$300,) not to exceed \$500, in addition to any civil penalty assessed:

1. Failure to obtain a certificate of registration after notice by mail to the seller's last known address.
2. Failure to file (A RETURN) two or more returns in any one calendar year after notice from the Borough to the Seller's last registered address (OR FAILURE TO REMIT TAXES DUE).
3. Falsification or misrepresentation of any record filed with the Borough hereunder or required to be kept hereby, if used to mislead Borough tax authorities.
4. Refusal of a Seller to allow inspection at reasonable times of records required to be kept by this chapter.

B. Each act (HEREUNDER) prohibited by Subsection A constitutes a separate offense. (AND EACH DAY CONSTITUTES A SEPARATE OFFENSE FOR CONTINUING CRIMES OF OMISSION OR CONCEALMENT.)

Section 3. That the Mayor is authorized to effectuate this ordinance, which takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 16 DAY OF June, 1981.


Paul Fischer, Assembly President

ATTEST:


Borough Clerk

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