

Introduced by: Mayor  
Date: June 21, 1983  
Hearing: July 19, 1983 Postponed  
Vote: Unanimous  
Action: Enacted as Amnd.

KENAI PENINSULA BOROUGH

ORDINANCE 83-45

AMENDING KPB TITLE 5 TO CONFORM REAL AND PERSONAL DELINQUENT TAX ENFORCEMENT PROCEDURES WITH STATE LAW AND OTHER PROVISIONS OF THE CODE AND TO AUTHORIZE PUBLICATION OF DELINQUENT PERSONAL PROPERTY TAX AND CLARIFY ENFORCEMENT PROCEDURES AND TO AUTHORIZE STAGGERED SALES TAX REPORTING PERIODS AND TO REPEAL SALES TAX LIENS.

WHEREAS, a portion of the ordinances dealing with the enforcement of delinquent real and personal property taxes are inconsistent with each other and with State law; and

WHEREAS, publication of the names of delinquent personal property taxpayers generates the payment of some taxes without the cost of initiating lawsuits;

WHEREAS, the efficiency of processing sales tax returns and of enforcement would be enhanced by staggering reporting dates; and

WHEREAS, consignment sales are increasing as a means of selling goods without store overhead costs but are not clearly defined as included within sales tax provisions; and

WHEREAS, the Alaska Supreme Court in Fairbanks North Star Borough v. Howard, 608 P2d 32 (Alaska 1980) struck down ordinances attempting to create liens for sales taxes;

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

Section 1. That Section 5.12.070 of the Kenai Peninsula Borough Code of Ordinances be amended as follows:

5.12.070 Tax statements--Date for mailing. [ON OR BEFORE JUNE 30TH, THE ASSESSOR] The Finance Director shall mail tax statements to the persons listed as owners of record on the tax rolls by July 1, setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

Section 2. That Section 5.12.090 of the Kenai Peninsula Borough Code of Ordinances is repealed.

Section 3. That Section 5.12.230 of the Kenai Peninsula Borough Code of Ordinances is repealed.

Section 4. That Subsections F, G, and H of Section 5.12.240 of the Kenai Peninsula Borough Code of Ordinances be amended as

follows:

F. Property under distraint shall be sold at public auction [OFFERING THE PROPERTY AT NOT LESS THAN ITS FAIR MINIMUM PRICE, AS ESTIMATED BY THE BOROUGH ASSESSOR. SHOULD A BID NOT BE RECEIVED FOR THE MINIMUM VALUE OF THE PROPERTY, IT MAY EITHER BE STRICKEN OFF TO THE BOROUGH, OR RETURNED TO THE OWNER, IN THE DISCRETION OF THE BOROUGH TAX COLLECTOR. IF STRICKEN OFF TO THE BOROUGH, THE BOROUGH MAY DISPOSE OF IT AS IT SEES FIT.] to the highest bidder.

G. The actual proceeds[, OR CREDIT FOR THE MINIMUM PRICE IF STRICKEN OFF TO THE BOROUGH,] of the sale shall be applied first to costs, including costs of sale, then to interest, then to penalty, and then to taxes, after which any excess shall be given over to the owner, by check. The terms of all sales hereunder shall be cash. The former owner of the property shall be served by regular mail, at his last known address, with the results of the sale.

H. Should the sale proceeds be insufficient to pay the costs, taxes, penalty and interest, a supplemental warrant may be issued. [IN NO EVENT SHALL THE COSTS ASSESSED, AT ANY SALE, EXCEED 20 PERCENT OF THE VALUE REALIZED AT THE SALE.]

Section 5. That Subsection A of Section 5.12.340 of the Kenai Peninsula Borough Code of Ordinances be amended as follows:

5.12.340 Tax liens--Sale lands--Disposition of proceeds. A. Upon satisfactory identification, the [FORMER] record owner [OR HOLDER OF A MORTGAGE, DEED OF TRUST OR OTHER SECURITY INSTRUMENT OF PROPERTY ACQUIRED BY THE BOROUGH THROUGH FORECLOSURE PROCEEDINGS] at the time of tax foreclosure, or his assigns, may at any time before the sale, or contract for sale, of tax foreclosed property repurchase that property for the full amount due to the borough and any city under the judgment and decree of foreclosure, plus accrued interest and associated costs, and delinquent taxes assessed and levied as though it had continued in private ownership, together with recording fees. Any person asserting to be an assignee of the record owner shall provide an abstract of title, title opinion or title report, at no cost to the borough, establishing his right to repurchase.

Section 6. That Section 5.12.350 of the Kenai Peninsula Borough Code of Ordinances be amended as follows:

5.12.350 Tax liens--Enforcement on personal property--Procedures--Borough attorney authority. A.

The [TAX COLLECTOR] Finance Director shall make up a roll of persons delinquent in personal property taxes or taxes on property the fee title to which rests in the United States, the state or a political subdivision thereof, together with a statement of the amount owing, as soon as possible after January 1st of each year. When the list is prepared, a copy of it shall be presented to the assembly and the assembly shall, by resolution, specify the [MINIMUM AMOUNT] date upon which the borough will institute further proceedings to collect.

B. After the assembly has so specified, a copy of the roll containing the names and total amount due together with a notice of the date collection actions will commence shall be published in the manner prescribed by Section 5.12.260. The notice [A DEMAND SHALL BE MADE BY ORDINARY MAIL ON EACH PERSON LIABLE FOR THE PAYMENT OF THE DELINQUENT TAXES, PLUS PENALTY, INTEREST AND COSTS, IF ANY. THE DEMAND] shall specify that if payment is not received by the date included in the published notice, [WITHIN 30 DAYS,] the obligation shall be referred to the borough attorney for collection.

C. After the expiration of the date specified in the publication, [B. UPON REFERRAL,] the borough attorney shall promptly file suit against the delinquent taxpayers involved. The attorney may proceed by way of distraint and sale if, in his judgment, there is imminent danger that the tax will not otherwise be collected, or the taxpayer is not subject to service within the jurisdiction. Judgments obtained by the borough may be enforced by execution on any property of the delinquent taxpayer.

Section 7. That subsection "H" of Section 5.16.010 H of the Kenai Peninsula Borough Code of Ordinances is amended as follows:

H. "Seller" includes persons who are vendors of property, persons furnishing services, the lessor of rental space or goods, and all persons making sales, including consignees and including persons conducting garage or moving sales on more than 14 days during any calendar year and including persons who conduct garage or moving sales where items will be sold for a commission or fee. Notwithstanding any other provisions of this chapter, "Seller" shall include all persons engaging in sales of fireworks regardless of the length of time, duration or volume of such sales in any calendar year.

Section 8. That Section 5.16.010 of the Kenai Peninsula Borough Code of Ordinances is amended by adding a new subsection

"J" which shall read as follows:

J. "Quarter" means the trimonthly reporting period established by the Finance Director for a seller, except as provided in Section 5.16.280, without regard to either a calendar or fiscal year.

Section 9. That Section 5.16.050 of the Kenai Peninsula Borough Code of Ordinances is amended as follows:

5.16.050 Seller--Quarterly payment of taxes required--Contents of return. Taxes due the borough collected by a seller hereunder shall be paid at the expiration of each quarter [OF EACH CALENDAR YEAR]. Every seller liable for the collection of the tax shall file with the borough upon forms furnished by it a return setting forth:

- A. Gross sales;
- B. The nontaxable portion separately stating the amount of sales revenue attributable to each class of exemption;
- C. Taxes collected;
- D. Such other information as may be required by regulation.

The complete return, together with remittance in full for the amount of the tax due, must be transmitted to the borough on or before the last day of the month succeeding the end of each quarter.

A transmittal of taxes made by mail shall not be considered delinquent if the postmark on the envelope indicates the date of mailing to be on or before the first business day following the last day of the month succeeding the end of the quarter.

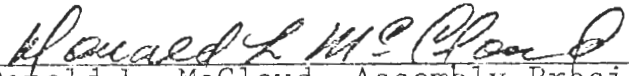
Section 10. That Section 5.16.270 of the Kenai Peninsula Borough Code of Ordinances is repealed.

Section 11. That KPB 5.16.090 dealing with exemptions to sales taxes be amended to add a new subsection to read as follows:

O. Garage sales or moving sales conducted by any one person for less than a total of 14 calendar days during each year. Garage sales under this exemption will not include sales of property belonging to persons other than the person conducting the sale, where the person conducting the sale will receive a fee or commission for the sale of any or all of the items at the sale.

Section 12. That this ordinance takes effect immediately on the date of its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON  
THIS 2nd DAY OF August, 1983.

  
Donald L. McCloud, Assembly President

ATTEST:

  
Borough Clerk

