

Introduced by: Nash
Date: April 7, 1987
Hearing: May 5, 1987
Vote: 12 Yes, 3 No
Action: Enacted

KENAI PENINSULA BOROUGH

ORDINANCE 87-10 (MAYOR'S SUBSTITUTE)

AMENDING KPB 5.18 CONCERNING THE BOROUGH SALES TAX TO ESTABLISH A MINIMUM FINE FOR FAILURE TO FILE A RETURN; TO CLARIFY THE EXEMPTION FOR RAW MATERIALS INCLUDED IN MANUFACTURE AS APPLIED TO BUILDING CONTRACTORS; AND TO CLARIFY CONFIDENTIALITY PROVISIONS.

WHEREAS, the Borough sales tax ordinance requires a registered seller to file a return for each reporting period during which his or her business is registered; and

WHEREAS, upon closing a business operation, it is incumbent upon the seller to notify the Borough in order that the significant expense involved in notifying and pursuing a non-filing seller need not be incurred where the seller has in fact ceased operations of his or her business; and

WHEREAS, it is impossible for the Borough to determine that a business has ceased operations without a significant expenditure of time and money through actions of the Delinquent Accounts Division of the Finance Department; and

WHEREAS, questions have arisen as to the application of KPB 5.18.255(E) regarding the exemption for building contractors for the purchase of materials utilized in the building process; and

WHEREAS, certain sellers who are not in compliance with the sales tax ordinances are taking unfair advantage of the concessions set forth therein;

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

Section 1. That KPB section 5.18.085(B) is hereby amended to read as follows:

B. A seller who fails to file a tax return and pay all taxes due within 60 days of the date due or who has been more than 30 but less than 60 days late in filing or remitting taxes due for 2 [OR MORE QUARTERS] reporting periods within the previous four reporting periods shall [MAY] be required by the mayor to file returns and remit taxes on a monthly basis until otherwise directed by the mayor for the convenience of the borough.

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Section 2: That KPB section 5.18.180(C) is hereby amended to read as follows:

C. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action or proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments and filings of any seller or agent of any seller required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within 30 days after the required date for that business [WRITTEN NOTICE IS POSTED BY REGULAR MAIL TO THE ADDRESS OF RECORD]. Entry into any agreement whether pursuant to the provisions of section 5.18.290 of this chapter or otherwise, which does not provide for payment in full of all taxes, interest, penalties, fees, costs or other payments required by this chapter within 30 days of the date of the agreement shall not act as any prohibition to disclosure of the records of that seller pursuant to this section, section 5.18.100, or otherwise as provided in this chapter.

Section 3. That KPB section 5.18.210 is amended by adding a new subsection (C) to read as follows:

C. The assembly shall have no authority to grant any extension of time or waiver of any provision of this chapter or any regulations adopted pursuant to this chapter other than by ordinance.

Section 4. That KPB sections 5.18.290(A) and (F) are amended to read as follows:

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 25% [50%] of the amount of any tax found to be due in addition to payment of the actual amount of taxes plus the allocated administrative costs or actual attorney and administrative fees and costs.

F. A seller shall immediately notify the borough of any fire, theft or other casualty which prevents his or her compliance with this chapter. The casualty constitutes a defense to any penalty provided in this chapter if determined to be the proximate cause of the failure to comply for a given reporting period, but does not excuse the seller from liability for taxes due. Accidental loss of funds or records is not a defense against the penalties of this section.

Section 5. That KPB 5.18.090 is hereby amended to read as follows:

5.18.090 Seller-Return filing required when. A. Every seller is required to file a sales tax return for each reporting period made applicable to his or her business by this chapter, regardless of whether or not any taxable sale was made. [ANY PERSON WHO FILED OR SHOULD HAVE FILED A SALES TAX RETURN FOR THE PRIOR REPORTING PERIOD SHALL FILE A RETURN, EVEN THOUGH NO TAX MAY BE DUE. THIS RETURN SHALL SHOW WHY NO TAX IS DUE, AND, IF THE BUSINESS IS SOLD, THE NAME AND ADDRESS OF THE PERSON TO WHOM IT WAS SOLD, AND THE DATE OF SALE.]

B. Any seller who fails to file a return required under this chapter within 30 days of written notification by regular mail, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of \$25.00, in addition to any penalty for late filing.

Section 6. That KPB 5.18.255(E)(5) is amended to read as follows:

5. Every sale of use or title in tangible personal property, regardless of quantity or price, whether sold by coin-operated machine or otherwise, except:
 - a. Sales to a wholesale or retail dealer in the property sold, for the purpose of resale by him;
 - b. Sale of personal property as raw material to a person engaged in manufacturing for sale, where the property sold is consumed in the manufacturing process of, or become an ingredient or component part of a product manufactured for sale by the manufacturer. [BUILDING CONTRACTORS ARE MANUFACTURERS FOR PURPOSES OF THIS SECTION];
 - c. Sale of personal property as raw material to a licensed building contractor where the property sold becomes a component part of the product sold by that building contractor;

Section 7. That KPB chapter 5.18.120 is amended to read as follows:

5.18.120 Seller--Certificate of registration required when. All sellers shall file with the borough an application for a certificate of registration, on a form provided by the borough, prior to commencing business, or the opening of an additional place of business. Each business shall be registered under the advertised

name of the business, and each separate business shall be registered under its own separate account.

Section 8. That KPB chapter 5.18.150 is amended to read as follows:

5.18.150 Resale cards--Expiration. The borough shall issue resale cards to be utilized in purchases for resale which are exempt from sales tax due to the exception provided by KPB 5.18.255(E)(5) governing resale exemption. Resale cards shall be valid for a period of one year and shall be reissued annually for a charge of \$10.00 per card by the borough upon determination that seller has established compliance with the regulations adopted by the assembly setting out criteria for issuance. Resale cards shall be surrendered when holder ceases doing business. Misuse of a resale card is a violation subject to penalty under KPB 5.18.300(5).

Section 9. That this ordinance takes effect July 1, 1987 except for Section 8, which takes effect at 12:01 a.m. on January 1, 1988.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 5th DAY OF May, 1987.

ATTEST:


Borough Clerk


Jonathan W. Sewall, Assembly President