

Introduced by: Sales Tax
Committee
Date: September 20, 1988
Hearing: November 1, 1988
Vote: 11 Yes, 2 No
Action: Enacted
11/1/88 Postponed to 12/6/88

KENAI PENINSULA BOROUGH

ORDINANCE 88-40 (SUBSTITUTE)

AMENDING THE BOROUGH SALES TAX CODE ACCORDING TO THE FINDINGS AND DETERMINATION OF THE SALES TAX COMMITTEE OF THE BOROUGH ASSEMBLY.

WHEREAS, the Borough Assembly appointed a sales tax committee consisting of members of the Assembly and interested individuals of the Borough community; and

WHEREAS, the sales tax committee held five public meetings to consider proposed revisions to the sales tax code designed to provide a more fair, efficient, and enforceable sales tax; and

WHEREAS, the Borough administration has proposed certain revisions to clarify certain code sections which had been questioned by the public in the past;

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

Section 1. That KP 5.18.010 is amended to read as follows:

5.18.010 Levied-Amount. A. There is levied by the borough a consumer's sales tax of 2% on all retail sales, on all rents, and on all services made or rendered within the borough, measured by the gross sales price of the seller.

B. In addition to the tax levied by the borough, any municipality within the borough may levy a consumer's sales tax as provided by AS 29.45.700 [29.53.440] which shall be reported, collected, and enforced according to the terms of this chapter.

Section 2. That KP 5.18.085 is amended to read as follows:

5.18.085 Returns-Schedule for filing. The mayor shall designate in writing the schedule for filing periodic sales tax returns for each seller which shall be on a tri-monthly basis, except as follows:

[A. THE MAYOR MAY PROVIDE THAT A BUSINESS WHICH OPERATES ON A SHORT TERM OR SEASONAL BASIS MAY BE GIVEN THE OPTION TO FILE RETURNS MONTHLY FOR MONTHS DURING WHICH THERE ARE ACTUAL SALES OF \$100.00 OR MORE, AND NOT FILE FOR MONTHS IN WHICH TAXABLE SALES ARE LESS

THAN \$100.00. SELLERS ELECTING THIS OPTION SHALL BE REQUIRED TO FILE AN ANNUAL RETURN COVERING ALL MONTHS FOR WHICH A MONTHLY FILING WAS NOT REQUIRED.]

A. [B.] A seller who fails to cure a delinquency within fifteen (15) days of a notice of such delinquency sent by regular mail, [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 REPORTING PERIODS WITHIN THE PREVIOUS FOUR REPORTING PERIODS] shall be required by the mayor to file returns and remit taxes on a monthly basis for one (1) year. If there are continued delinquencies, the monthly filing requirement will be extended until otherwise directed by the mayor for the convenience of the borough.

B. For the first twelve (12) months after a sales tax certificate is issued, returns shall be filed monthly.

C. Accounts which have had less than \$1,000 in taxable sales in the preceeding twelve (12) months may file returns annually.

D. A seller seeking to change filing status must apply in writing and receive written approval for such change to become effective.

Section 3. 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. For the first year that any business is registered to collect sales tax, returns shall be filed monthly. After the first year the business may make written application to file on a less frequent basis.

B. Any seller who fails to file a return required under this chapter within fifteen (15) [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 for each

return not filed, in addition to any penalty for late filing.

Section 4. That KPB 5.18.120 is repealed and reenacted as KPB 5.18.015 with language identical to that currently codified.

Section 5. That KPB 5.18.290(C) is hereby repealed and that KPB 5.18.290 para. D, E, and F, are redesignated para. C, D, and E respectively. Further, that a new KPB 5.18.190(C) is enacted to read as follows:

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 auditable return indicating a lesser liability or unless a greater liability is shown upon audit. The auditor's estimate will include an audit estimate fee that is payable regardless of whether or not the seller files his own returns. The amount of the fee will be determined by regulation but will not exceed \$100.

Section 6. That KPB 5.18.250 is amended to read as follows:

5.18.250 Exempted buyer--Registration--Certificate of exemption granted when--Expiration. Any class of buyer exempt under Section 5.18.260(C) shall register with the borough as an exempted buyer to avoid payment of tax. Registration shall be upon forms provided by the borough and shall include a brief statement of the reason for exemption and such other information as the borough may require. Upon registration, the buyer shall be issued a certificate of exemption which the buyer must show seller to utilize the exemption. The exempt card shall be valid for a period of one year and shall be reissued annually for a charge of \$10 per card by the borough upon determination that the buyer has established compliance with the regulations adopted by the assembly setting out criteria for issuance.

Section 7. That KPB 5.18.255 (F) (1) is amended to read as follows:

1. Every sale or exchange of services with the exception of sales of intermediate services to

a business the charge for which will be passed directly by that business to [be] a specific buyer. Provision of meals, temporary lodging and/or utilities shall in no case fall within the exception from sales tax provided for intermediate services.

Section 8. That a new KPB 5.18.255 (F) (7) is enacted to read as follows:

7. Every rental or lease of real property other than a rental or other agreement for occupancy of residential real property pending the closing of a transaction which does not exceed 90 days in length for a buyer of that property.

Section 9. That a new KPB 5.18.255(K) is enacted to read as follows:

K. Temporary lodging is defined as any lodging of less than one month. Each night's rental of each individual room shall be considered a separate transaction and therefore the maximum tax computation provided by KPB 5.18.055 shall be calculated on a per room per night basis.

Section 10. That former KPB 5.18.290(G), which is redesignated (F) by Section 4 to this ordinance, is amended to read as follows:

[G] F. The mayor may enter an agreement secured by a confession of judgment or a deed of trust on property with sufficient equity to cover the liability for delinquent sales taxes on such payment terms as the administration finds reasonable, provided that the terms shall require the full payment of all obligations of the seller within a maximum period of 24 months from entry of such an agreement. The mayor shall not enter into a repayment agreement with a seller who has been involved in a repayment agreement within the prior five (5) years.

Section 11. That a new Section 5.18.290(G) is enacted to read as follows:

G. All businesses or owners of businesses against which the borough has an outstanding judgment may be required by the mayor to deposit sales tax monies collected, on a weekly basis, to a joint bank account upon which the borough is signatory. Dual signature would be required for withdrawal from the account.

Section 12. That KPB 5.18.295(A)(2) is amended to read as follows:

2. Failed within 60 days of the end of the filing period from which taxes were due to either (a) remit all amounts [TAXES, PENALTIES AND INTEREST] due, or (b) to enter into a secured payment agreement as provided by Section 5.18.290 of this code.

Section 13. That KPB 5.18.295(B) is amended to read as follows:

B. Prior to filing a sales tax lien, the mayor shall cause an additional written notice of intent to file to be mailed to the last known [REGISTERED] address of the delinquent seller.

Section 14. That a new KPB 5.18.040(B) is enacted to read as follows:

B. Failure to register under this chapter or to collect taxes which otherwise should have been collected under this chapter shall not be a defense to an action by the a borough against such seller to recover all amounts due.

Section 15. That KPB 5.18.100(B) is amended to read as follows:

B. Any person [PURCHASER] acquiring an ownership interest in an ongoing business or the accounts receivable of a business, whether by purchase, foreclosure, or otherwise, shall be liable for the payment of taxes, penalties and interest accruing and unpaid to the borough on account of the operation of the business by the former owner, owners or assigns; provided, however, that the borough shall first make all reasonable efforts to collect the tax from the person who owned the business at the time the liability was incurred.

Section 16. That a new KPB 5.18.125 is enacted to read as follows:

5.18.125 Injunction to prohibit unregistered businesses. The mayor may cause a proceeding to be filed in the Superior Court fifteen (15) days after providing notice by regular mail to any business which has failed to obtain its initial registration under this chapter, requesting the issuance of an injunction prohibiting that business from continuing to conduct business.

Section 17. That a new KPB 5.18.130(E) is enacted to read as follows:

E. Upon payment of the fee established by regulation, the mayor will issue a duplicate sales tax certificate to any seller whose certificate has been lost or destroyed.

Section 18. That KPB 5.18.230 is amended to read as follows:

5.18.230 Publishing names of businesses assumed to have ceased conducting business. A. Sellers [AND AGENTS OF SELLERS] who have not filed returns for two (2) consecutive reporting periods shall be assumed to have ceased conducting business and shall be removed from the roll of active businesses.

B. As soon as practicable after the expiration of thirty (30) days following the end of the second consecutive reporting period in which a return is not filed, the mayor shall publish in a newspaper in general or customary circulation in the appropriate area of the borough, a list of all sellers [AND AGENTS OF SELLERS] who have not so filed and are therefore assumed to no longer be conducting business in the Kenai Peninsula Borough. Nothing contained in this section shall be construed to prohibit additional publications in such other newspapers as the mayor shall authorize.

C. If the mayor has reason to believe that a seller who has been removed from the roll of active businesses pursuant to this section is in fact continuing to conduct business, the mayor may cause a proceeding to be filed in the Superior Court requesting the issuance of an injunction prohibiting that business from continuing to conduct business.

D. Reinstatement [CONTINUED OPERATION] of a business removed from the active roll by this section [AFTER 30 DAYS FOLLOWING PUBLICATION SHALL RAISE A LIABILITY FOR] shall require the payment of a mandatory reinstatement fee of \$100 plus all other amounts due.

Section 19. That KPB 5.18.255(F)(2) is amended to read as follows:

2. Every rental or lease of [REAL OR] personal property; where personal property is rented from a dealer in a taxable transaction and the renter is then directly reimbursed by a third party for the exact rental expense, without markup, then that reimbursement

is not a rental or lease subject to the borough sales tax;

Section 20. That KPB 5.18.260(A) is amended to read as follows:

A. Isolated sales or rentals of property or services not in the ordinary course of business except as provided in this chapter for consignment, garage and moving sales;

Section 21. That a new KPB 5.18.275 is enacted to read as follows:

5.18.275 Forgiveness of uncollected taxes, penalties and interest. A. The mayor may forgive the payment of uncollected sales taxes, interest and penalty thereon, and penalties for failure to file owing by a seller to the borough upon a determination by the mayor that such uncollected sales taxes:

1. Have never been collected by a substantial portion of a clearly, definable class of seller; or

2. Have never been collected on a substantial portion of a clearly defined class or type of transaction or service; or

3. Where an interpretation is affirmatively provided by the borough to an inquiring seller, and the seller in reasonable reliance upon that interpretation fails to collect a sales tax, which collection is later determined to have been legally required under KPB Chapter 5.18.

B. The mayor shall notify the assembly in writing of any such incidence of forgiveness which shall be final unless overridden by the assembly within thirty (30) days of such forgiveness.

Section 22. That KPB 5.18.290(F) is amended to read as follows:

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 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 23. That KPB 5.18.295(A) is amended to read as follows:

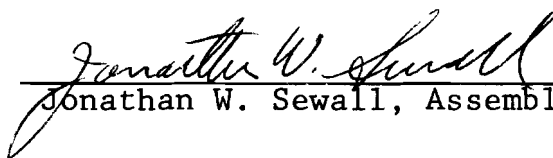
A. The mayor may [SHALL] cause a sales tax lien (per AS 29.45.650(e)) to be filed and recorded against all real and personal property of a registered seller where the seller has:

1. Failed to file sales tax returns for two (2) consecutive filing periods as required by this chapter; or

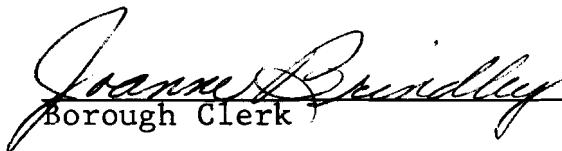
2. Failed within sixty (60) days of the end of the filing period from which taxes were due to either (a) remit all amounts [TAXES, PENALTIES AND INTEREST] due or (b) to enter into a secured payment agreement as provided by Section 5.18.290 of this code.

Section 24. That this ordinance takes effect at 12:01 am on January 1, 1989.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 6th DAY OF December, 1988.


Jonathan W. Sewall, Assembly President

ATTEST:


Borough Clerk