

Introduced by: Mayor @ Req of
Sales Tax Committee
Date: July 17, 1990
Hearing: Aug. 21, 1990
Action: ENACTED
Vote: Unanimous

KENAI PENINSULA BOROUGH

ORDINANCE 90-48

REORGANIZING THE KENAI PENINSULA BOROUGH SALES TAX CODE

WHEREAS, the current Borough sales tax ordinance format makes it difficult for sellers to find requirements in the code; and

WHEREAS, the assembly sales tax committee requested that the sales tax code be reorganized and reformatted to make it easier to find sales tax requirements; and

WHEREAS, the sales tax code has been reorganized and reformatted, without substantive changes to the language of the code, to make it easier to read; and

WHEREAS, the sales tax committee has recommended that the assembly adopt the reorganized and reformatted code;

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

Section 1. That KPB 5.18 is repealed and reenacted as follows:

SALES TAX
(Revised 1990)

Sections:

PART 100	GENERAL
[5.18.010]	5.18.100 Levied--Amount.
[5.18.240]	5.18.110 Proceeds--Use for school purposes-- payment to cities.
[5.18.020]	5.18.120 Payment by buyer and collection by seller.
[5.18.040(A)]	5.18.130 Seller--Accountability to borough--
[5.18.100(B) (C)]	Successor liability to borough.
[5.18.210]	5.18.140 Administration enforcement authority--Request for ruling.

PART 200

EXEMPTIONS/WAIVERS

[5.18.260]	5.18.200	Exemptions.
[5.18.255 (F) (5) (a,b,c)]	5.18.210	Exemption for sales for resale.
[5.18.255 (F) (1 & 2)]	5.18.220	Exemption for intermediate services and rentals.
[5.18.255 (I) (7)]		
[5.18.250 [5.18.260 (M)]	5.18.230	Exemptions--Exempt buyer-- Registration-- Certificate of exemption-- Expiration.
[5.18.150]	5.18.240	Exemptions--Resale cards-- Expiration.
[5.18.050]	5.18.250	Exemptions--Seller's liability for incorrect determination.
[5.18.110 [5.18.210 (C)]	5.18.260	Waiver--Application for extensions of time--Assembly authority.
[5.18.275]	5.18.270	Waiver--Uncollected taxes, penalties, and interest.

PART 300

REGISTRATION

[5.18.015]	5.18.300	Seller--Certificate of registration required.
[5.18.130]	5.18.310	Certificate issuance--Display required--Compliance agreement--Bond requirements--Duplicate certificate.
[5.18.140]	5.18.320	Certificate nonassignable--Surrender requirements--Successor seller.
[5.18.220]	5.18.330	Certificate index--Publication.

PART 400

COMPUTATION

[5.18.060] [5.18.255 (F) (6)]	5.18.400	Addition of tax to total retail price--Tax schedule-- Exceptions.
[5.18.160]	5.18.410	Seller--Restrictions on imposition of tax.
[5.18.030]	5.18.420	Installment sales--Tax collected when.
[5.18.055] [5.18.255 (K)]	5.18.430	Maximum tax.

PART 500

RETURNS/RECORDS/AUDIT

[5.18.090 (A)] [5.18.085]	5.18.500	Returns--Filing required--Filing schedule.
[5.18.080 (B)]	5.18.510	Returns--Contents.
[5.18.080 (A,C,D)]	5.18.520	Returns and sales taxes--Filing and payment required by due date.
[5.18.070]	5.18.530	Returns--Credit for costs of collection.
[5.18.180] [5.18.100 (C)]	5.18.540	Returns--Confidentiality requirement--Exceptions.
[5.18.100 (A)]	5.18.550	Final return--Required information.

[5.18.190 (A)] 5.18.560 Records--Seller recordkeeping
 [5.18.290 (E)] required--Loss of records.
 [5.18.190 (B)] 5.18.570 Audit--Investigation authority--
 [5.18.200] Seller's consent to inspection of
 tax returns.
 [5.18.190 (C)] 5.18.580 Audit--Estimation of tax due.

PART 600 ENFORCEMENT

[5.18.040 (B)] 5.18.600 Civil and criminal actions--Payment
 [5.18.290 (D,F,G)] agreements--Joint bank accounts
 [5.18.300 (B)]
 [5.18.125] 5.18.610 Failure to register--Criminal
 [5.18.290 (A)] penalty--Civil penalty--Injunction.
 [5.18.300 (A) (1)]
 [5.18.090 (B)] 5.18.620 Failure to file returns or remit
 [5.18.230] taxes--Criminal penalty--Civil
 [5.18.290 (B)] penalty--Publication--Injunction.
 [5.18.300 (A) (2)]
 [5.18.300 5.18.630 Failure to keep adequate records--
 (A) (3 & 4)] criminal penalty.
 [5.18.240 (B)] 5.18.640 Misuse of resale or exempt card--
 [5.18.300 (A) (5)] Criminal penalties.
 [5.18.290 (C)] 5.18.650 City sales tax ordinance penalties--
 Enforcement.
 [5.18.295] 5.18.660 Sales tax liens.
 [5.18.090 (B)] 5.18.670 Schedule of fees.
 [5.18.130 (E)]
 [5.18.230 (E)]
 [5.18.290 (C)]

PART 900 DEFINITIONS

[5.18.255] 5.18.900 Definitions.

GENERAL - PART 100

5.18.100 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 Alaska Statute which shall be reported, collected, and enforced according to the terms of this chapter.

5.18.110 Proceeds--Use for school purposes--Payment to cities. A. The net proceeds from the taxes collected by the borough pursuant to this chapter shall be used exclusively for borough school purposes.

B. The net proceeds from the taxes collected for any city shall be promptly paid over to the appropriate city.

5.18.120 Payment by buyer and collection by seller. The obligation of the tax is upon the buyer. The seller shall collect the tax at the time of payment for the sale, except as provided in this chapter.

5.18.130 Seller--Liability to the borough--Successor liability to the borough. A. All sales taxes collected or which should have been collected pursuant to this chapter are borough moneys for which the seller is at all times accountable to the borough.

B. Any person 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.

C. The liability of a purchaser or other entity for outstanding taxes, penalties and interest accrued and unpaid by the former owner shall be limited to an amount stated in writing by the borough in response to a release of information request. The borough shall have 15 days to respond to the request.

5.18.140 Administration enforcement authority--Request for ruling. A. The mayor shall have the power to adopt appropriate regulations, procedures, and forms as necessary to facilitate and enforce proper registration, reporting, and collection of the tax herein imposed, and providing for the implementation and interpretation of this chapter. Regulations establishing procedures for rulemaking and interpretation are subject to assembly approval.

B. Should a taxpayer under this chapter or a seller obliged to collect the tax be in doubt as to the application of the chapter to an actual situation facing him or about to face him, he may apply to the mayor for a ruling on the issue. Rulings having general application shall be promulgated as regulations.

EXEMPTIONS/WAIVERS - PART 200

5.18.200 Exemptions. A. The following classes of retail sales, services and rentals are exempt:

1. 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;

2. Hospital services and medical services performed by licensed medical doctors, dentists, osteopaths, optometrists, chiropractors, state-licensed private nurses, speech and hearing

pathologists, physical therapists, state-licensed psychologists and psychological associates, and retail sales of medicinal preparations, drugs or appliances for which a written prescription is required from one of the foregoing;

3. Subscriptions to newspapers and periodicals;
4. Dues or membership fees for nonprofit organizations.
5. Sales of animal food, seed, plants and fertilizers to farmers using such commodities to produce goods for sale;
6. Retail sales of real property. Services performed by a real estate broker or agent are not exempt under this section;
7. Retail sales, rents or services which the borough is prohibited from taxing by the Constitution or laws of the United States or of the state of Alaska.
8. Services performed by morticians licensed under Alaska Law, and retail sales of funeral supplies by morticians and municipalities;
9. Receipts of nonprofit schools and student organizations within the schools for extracurricular activities or events;
10. Financial Service Transactions. For purposes of this chapter, financial service transactions are limited to: deposit account services, loan transaction fees, transactions relating to the sale or exchange of currency or securities, transactions for conversion of negotiable instruments, safe deposit services and escrow collection services;
11. Sale of passenger seat tickets by a commercial airline. Air charter sales are not exempt;
12. Freight hauling services;
13. Title insurance premiums;
14. Food purchased with coupons issued under the federal food stamp program;
15. Notwithstanding provisions of KPB 5.18 to the contrary, retail sales of food are exempt in the following circumstances: (1) when served in cafeterias or lunchrooms of elementary, secondary, post-secondary schools, colleges or universities which are operated primarily for students and staff, and are not operated for the public or for profit; (2) when served in a nonprofit hospital or other nonprofit institution licensed by the State of Alaska for the care of humans; (3) when meal delivery is a charitable function by a nonprofit organization to handicapped or senior citizens at their place of residence; (4) when served as a charitable function on the premises of a nonprofit senior citizens' organization which receives funding from the State of Alaska or a political subdivision of the State. This subsection KPB 5.18.200 (A) (15) shall not be in effect after December 31, 1990.
16. Notwithstanding provisions of KPB 5.18 to the contrary, retail sales of food are exempt in the following circumstances: when served at a recreational camp owned by a nonprofit entity holding a current borough sales tax exemption certificate. This subsection KPB 5.18.200 (A) (16) shall not be in effect after December 31, 1990.

B. The following classes of buyers are exempt from the provisions of this chapter:

1. Retail sales, services and rentals to religious and charitable organizations in the conduct of their regular religious and charitable functions and activities as defined by the revenue laws of the United States;

2. Retail sales, services and rentals to the United States, the state of Alaska, or any instrumentality or political subdivision of either;

3. Retail sales, services and rentals by or to organizations not organized for business or profitmaking purposes, and which are engaged in the provision of charitable, educational, recreational, rehabilitative, hospital, cemetery, or other charitable purposes. In no event shall this exemption apply to sales of liquor or food through the course of regularly conducted operations. No exemption certificate shall be approved by the mayor until the applicant has produced suitable evidence that it is currently incorporated by the state of Alaska as a nonprofit corporation and that it has received tax-exempt status from the United States Internal Revenue Service;

4. Notwithstanding provisions of KPB 5.18 to the contrary, organizations which are exempt from federal income taxation under the following sections of the Internal Revenue Code of 1986 shall be exempt from both collection and payment of sales tax, except for sales of food and liquor by the organizations: 501(C)(1) through 501(C)(23) 501(D), 501(E), 501(F), 501(K), 521(A). The applicant for the exemption must provide suitable evidence that the Internal Revenue Service has ruled or determined that the applicant qualifies for the federal income tax exemption before a sales tax exemption certificate can be granted. This subsection KPB 5.18.200(B)(4) shall not be in effect after December 31, 1990.

C. The following classes of sellers are exempt from the provisions of this chapter:

1. Retail sales, services and rentals by or to organizations not organized for business or profitmaking purposes, and which are engaged in the provision of charitable, educational, recreational, rehabilitative, hospital, cemetery, or other charitable purposes. In no event shall this exemption apply to sales of liquor or food through the course of regularly conducted operations.

5.18.210 Exemption for sales for resale. The following sales of tangible personal property are exempt under this chapter:

A. Sales to a wholesale or retail dealer in the property sold, for the purpose of resale by the dealer;

B. Sales 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 becomes an ingredient or component part of a product manufactured for sale by the manufacturer;

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.

5.18.220 Exemption for intermediate services and rentals.

The following sales of services and rentals are exempt under this chapter:

A. Sales of intermediate services to a business the charge for which will be passed directly by that business to 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;

B. 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;

C. Services rendered by an employee to his/her employer are not subject to borough sales tax.

5.18.230 Exemptions--Exempt buyer--Registration--

Certificate of exemption--Expiration. A. Any class of buyer exempt under section 5.18.200(B)(1) 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 the 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.

B. No exemption certificate shall be approved by the mayor until the applicant has produced suitable evidence that is currently incorporated by the state of Alaska as a nonprofit corporation and that it has received tax-exempt status from the United States Internal Revenue Service.

5.18.240 Exemptions--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 governing resale exemptions. Resale cards shall be valid for a period of 1 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.

5.18.250 Exemptions--Seller's liability for incorrect determination.

A. A seller shall determine in the first instance whether a retail sale is exempt under this chapter. However, if a seller incorrectly determines that a sale is exempt, then the seller is liable to the borough for the tax, just as if he had collected it.

B. In the event that the seller determines that a transaction is not exempt, but the buyer believes the transaction to be exempt, then the seller shall collect the tax and furnish to the buyer a certificate of protest form, supplied by the borough, which shall be filled out by the buyer and delivered to the borough. The certificate shall show the respective names and addresses of the seller and the buyer, the nature of the claim of exemption and such other information as may be prescribed by the borough.

C. The seller shall remit to the borough all certificates of protest delivered to him as promptly as possible, but in any event no later than 30 days after delivery of a certificate to him, together with any additional information which the seller believes to be pertinent to the determination of the issue.

D. The mayor will rule on each protest and send to the buyer a notice that his claim has been allowed or disallowed. If the claim has been allowed, a refund will be remitted with the notice.

E. In the event that the claim is disallowed, the buyer may, within 30 days, request that the claim be referred to the borough attorney for review and then to the mayor for reconsideration. The decision of the mayor on reconsideration shall be rendered in writing and shall be final, subject to judicial review where applicable.

5.18.260 Waiver--Application for extension of time--Assembly Authority. A. For good cause shown, the mayor may grant extensions on any time limitation described in this chapter upon application filed on or before the date specified as the original time limitation. The 5% credit will not be allowed where extension is granted.

B. 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.

5.18.270 Waiver--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 this chapter.

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.

REGISTRATION - PART 300

5.18.300 Certificate of registration required. 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.

5.18.310 Certificate issuance--Display required--Compliance agreement--Bond requirements. A. Upon receipt of a properly executed application indicating that all returns required to have been filed pursuant to this chapter by the applicant as seller or agent of any seller have been filed, and that all sales taxes required to have been remitted to the borough have been paid, the mayor will issue without charge to the seller a certificate of registration. The certificate shall state the address of the place of business to which it is applicable, the applicable state of Alaska business license number, if any, and shall authorize the seller to collect the tax.

B. The certificate must be prominently displayed at the place of business named in the certificate. A seller who has no regular place of business shall attach such certificate to his stand, truck or other merchandising device.

C. Where the application or borough records indicate that applicant is currently in violation of filing and remittance requirements of the borough sales tax provisions, the mayor may deny the application for registration until such time as applicant enters a binding agreement setting out a method by which full compliance will be attained.

D. Before issuing a certificate of registration, the mayor may require an applicant with no permanent place of business within the borough to post a cash bond of an amount deemed sufficient to insure the full and prompt payment of taxes to be collected under such certificate when in his judgment it is in the interest of the borough to do so. Failure to file forfeits the bond, but does not waive the rights to the borough to collect additional amounts due.

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.

5.18.320 Certificate nonassignable--Surrender requirements--Successor seller. The certificate of registration is nonassignable and nontransferable and must be surrendered to the mayor by the seller to whom it was issued upon his ceasing to do business within the taxing jurisdiction named therein. If there is a change in the form of organization such as from a single proprietorship to a partnership or a corporation, the admission or withdrawal of a general partner, or a change in seller's agent for service, the seller making such change shall surrender his old certificate to the mayor for cancellation. The successor seller is required to file a new application for a certificate of registration. Upon receipt of such application, properly executed, as provided in this chapter, a new certificate will be issued to such successor seller.

5.18.330 Certificate index--Publication. A. The mayor or his designee shall maintain in a public place within the borough administration building a current index alphabetized by name of business and name of owner, updated not less than quarterly, of all current certificates of registration for public inspection. B. As soon as practicable after the first day of January of each year, but not later than the first day of June each year, the mayor shall publish in a newspaper of general or customary circulation in the appropriate area of the borough, a list of all businesses with a then-current certificate of registration.

COMPUTATION - PART 400

5.18.400 Addition of tax to total retail price--Tax Schedule--Tax Rate--Exceptions. A. The tax to be added to the sale price, charge or rental shall be 2% of the sale price, charge or rental rounded off to the nearest cent by eliminating any fraction of one-half cent or less and by increasing any fraction over one-half cent to the next highest cent. Each seller shall be furnished the schedule of tax payable on each taxable amount from one cent to one hundred dollars. Any one sale of items separately priced shall be taxed upon the aggregate amount.

B. The place of delivery of the goods or services is the place of sale. Sellers of service which lack a definite place of delivery may, upon prior borough approval, collect the tax based upon the office location of the business selling such services.

C. The revenue from a coin-operated machine shall be treated in gross on a monthly basis, without reference to the amount paid on a particular transaction.

5.18.410 Seller--Restrictions on imposition of tax.

A. The seller shall, whenever feasible, separately state the tax to the buyer on each taxable transaction. When not feasible to state separately, the seller shall prominently display a sign indicating the imposition of the tax.

B. A seller shall not advertise, hold out or state to the public or to any buyer, directly or indirectly, that the tax payment or any part thereof imposed by this chapter will be assumed or absorbed by the seller, or that it will not be added to the sales price or that it will be refunded or assumed, in whole or in part.

5.18.420 Installment sales--Tax collected when. When a sale is made on an installment basis, the sales tax shall be collected at the time of the sale.

5.18.430 Maximum tax. The tax shall be applied only to the first \$500.00 of each separate sale, rent or service transaction.

A. The payment of rent, whether for real or personal property, in excess of \$500.00 and for more than one month, shall be treated as several separate transactions covering the rental/lease for one month each.

B. A transaction involving payment for services or personal property to be rendered or delivered over a period of more than one month for a consideration in excess of \$500.00 shall be treated as several separate transactions occurring one each month over the period of time that the service or property is rendered or delivered.

C. The purchase of building construction materials on a single vendor job account number and billed on a monthly basis are subject to application of the tax on a maximum of \$500.00 of each monthly billing.

D. Services provided on account and billed to the customer on a monthly basis are subject to application of the tax on a maximum of \$500.00 of each monthly billing, per account.

E. Each night's rental of each individual room shall be considered a separate transaction and therefore the maximum tax computation shall be calculated on a per room per night basis.

RETURNS/RECORDS/AUDIT - PART 500

5.18.500 Returns--Filing required--Filing schedule. 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. The mayor shall designate in writing the schedule for filing periodic sales tax returns for each seller which shall be on trimonthly basis, except as follows:

1. A seller who fails to cure a delinquency within fifteen (15) days of a notice of such delinquency sent by regular mail, 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.

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

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

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

5.18.510 Returns--Contents. Every seller required by this chapter to collect sales tax shall file with the borough upon forms furnished by it a return setting forth the following information with totals rounded to the nearest dollar:

1. Gross sales;
2. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption;
3. Computation of taxes to be remitted;
4. Such other information as may be required by regulation.

5.18.520 Returns and sales taxes--Filing and payment required by due date. A. Taxes collected or which should have been collected by a seller hereunder shall be paid to the borough at the expiration of the reporting period established for that seller.

B. The completed return, together with remittance in full for the amount of tax due, must be transmitted to the borough on or before the first business day following the last day of the month following the end of each reporting period.

C. 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 following the end of the reporting period.

5.18.530 Returns--Credit for costs of collection. If a return is filed with the taxes remitted within the time limit allowed the seller may retain 5% of the tax collected, to a maximum of \$1,000 per quarter, to cover his costs of administration of the tax, except in instances where an extension of time to file and remit has been granted as provided by this chapter.

5.18.540 Returns--Confidentiality requirement--Exceptions. A. Returns which include remittance in full of all sales taxes due and which are timely and properly filed with the borough for the purposes of complying with the terms of this chapter and all data obtained from such returns are confidential, and such returns and data obtained therefrom shall be kept from inspection

by all private persons. Nothing contained in this section shall be construed to prohibit the audit and investigation by the borough of any return filed under this chapter or of the books and records of any seller required to file any return under this chapter.

B. Nothing contained in this section shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return or report filed by him, nor to prohibit the publication of statistics so classified as to prevent the identification of particular buyers or sellers, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.

C. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action 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. Entry into any agreement whether pursuant to the provisions 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 as otherwise provided in this chapter.

D. A prospective lessee or purchaser of any business or business interest may inquire as the obligation or tax status of any business upon presenting to the mayor a release of tax information request signed by the registered owner of the business.

5.18.550 Final return--Required information. Fifteen days prior to the sale, lease, or other disposition, or change in ownership interest, other than a transfer of outstanding shares of stock, or upon incorporation of any business registered pursuant to this chapter, the business seller shall file a notice with the borough together with an informational return identifying the name and address of each person or entity involved in the change, the nature of the change and the effective date of the change.

5.18.560 Records--Seller recordkeeping required--Loss of records. A. Every seller engaged in activity subject to this chapter shall keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax which he is obliged to collect. Every seller shall preserve suitable records of sales for a period of 6 years from the date of the return reporting such sales, and shall preserve for a period of 6 years all invoices of goods and merchandise purchased for resale, and all such other

books, invoices and records as may be necessary to accurately determine the amount of taxes which the seller was obliged to collect under this chapter.

B. 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 chapter.

5.18.570 Audit--Investigation Authority--Seller's consent to inspection of tax returns. A. For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax collected or which should have been collected by any seller, the mayor may hold investigations and hearings concerning any matters covered by this chapter. The mayor may examine any relevant books, papers, records, or memoranda of any seller, may require the attendance of any seller or buyer, or any officer or employee of a seller or buyer at the hearing, and may require production of all relevant business records.

B. A seller required to register for sales tax collection under this chapter consents to the inspection of his federal income tax returns in order to facilitate the accomplishment of the provisions and objectives of this chapter.

5.18.580 Audit--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.

ENFORCEMENT - PART 600

5.18.600 Civil and criminal actions--Payment agreements--Joint bank accounts. A. Nothing in this chapter shall be construed as preventing the borough from filing and maintaining an action at law to recover any taxes, penalties, interest, and fees due from a seller. 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 borough against such seller to recover all amounts due. Each act

prohibited in this chapter constitutes a separate cause of action or offense.

B. 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.

C. 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.

5.18.610 Failure to register--Criminal Penalty--Civil penalty--Injunction.

A. Failure to obtain a certificate of registration after notice in writing either delivered directly to the seller, to the seller's place of business, or by mail to the seller's last known address; when intentional, constitutes a misdemeanor and is punishable by imprisonment for up to 30 days, and by a fine not to exceed \$500.00, plus costs of prosecution, in addition to any civil penalty assessed.

B. 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% 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.

C. 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.

5.18.620 Failure to file returns or remit taxes--Criminal penalty--Civil penalties--Publication--Injunction.

A. Failure to file 2 or more returns in any 1 calendar year after notice from the borough to the seller's last registered address; when intentional, constitutes a misdemeanor and is punishable by imprisonment for up to 30 days, and by a fine not to exceed \$500.00, plus costs of prosecution, in addition to any civil penalty assessed.

B. 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. All taxes due but not paid within the time required by this chapter shall accrue and be assessed an interest charge at the statutory rate as provided by Alaska Statute.

C. Any seller who fails to file a return required under this chapter within fifteen (15) 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.

D. Sellers who have not filed returns for 2 consecutive reporting periods shall be assumed to have ceased conducting business and shall be removed from the roll of active businesses as follows:

1. As soon as practicable after the expiration of 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 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.

2. Reinstatement of a business removed from the active roll by this section shall require the payment of a mandatory reinstatement fee.

E. 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.

5.18.630 Failure to keep adequate records. A. Each of the following acts, when intentional, constitutes a misdemeanor and is punishable by imprisonment for up to 30 days, and by a fine not to exceed \$500.00, plus costs of prosecution, in addition to any civil penalty assessed:

1. Falsification or misrepresentation of any record filed with the borough hereunder or required to be kept hereby, if used to mislead borough tax authorities;

2. Refusal of a seller to allow inspection at reasonable times of records required to be kept by this chapter.

5.18.640 Misuse of a resale or exempt card--Criminal penalties. A. Misuse of resale or exemption cards when intentional, constitutes a misdemeanor and is punishable by imprisonment for up to 30 days, and by a fine not to exceed \$500.00, plus costs of prosecution, in addition to any civil penalty assessed.

B. Misuse of a resale card is a violation subject to penalty.

5.18.650 City sales tax ordinances penalties--Enforcement. Penalties provided by city sales tax Ordinances shall be enforced by the borough in the same manner as the penalties imposed by this chapter.

5.18.660 Sales tax liens. A. The mayor may cause a sales tax lien 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 2 consecutive filing periods as required by the chapter; or
2. Failed within 60 days of the end of the filing period from which taxes were due to either (a) remit all amounts due or (b) to enter into a secured payment agreement as provided in this chapter.

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 address of the delinquent seller.

5.18.670 Schedule of Fees. The following fees shall be imposed and collected pursuant to this chapter:

- A. Issuance of a duplicate sales tax certificate at a rate established by regulation;
- B. Missing filing fee at the rate of \$25.00 for each return not filed;
- C. Reinstatement to active roll at the rate of \$100.00 per business;
- D. Audit estimate preparation fee at a rate established by regulation but not to exceed \$100.00.

5.18.900 Definitions. When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter, have the following meanings:

- A. "Buyer" includes persons who are purchasers of personal property, rental space or services.
- B. "Coin-operated machine" means a slot machine, marble machine, jukebox, merchandise vending machine, laundry, dry cleaning and any other service-dispensing machine or amusement device of any kind which requires the insertion of a coin to make it operative.
- C. "Mayor" or "borough mayor" means the mayor of the Kenai Peninsula Borough or his designee.
- D. "Person" includes individuals and every person recognized in law and every group of persons who act as a unit.
- E. "Quarter" means trimonthly period established by the finance director.
- F. "Sale" or "retail sale" includes:
 1. Every sale or exchange of services;
 2. Every rental or lease of personal property;
 3. Every sale of the use or play of a coin operated machine;
 4. Installment, credit and conditional sales;

5. Every sale of use or title in tangible personal property, regardless of quantity or price, whether sold by coin-operated machine or otherwise;

6. 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.

7. Gaming sales authorized by AS 5.15.

G. "Sales price" means consideration paid by the buyer whether money, credit, rights or other property, expressed in terms of money equal to the fair market value of the consideration and including delivery or installation costs, taxes, or any other expenses whatsoever, measured by the gross sales price of the seller.

H. "Seller" includes persons who are vendors of property, persons furnishing services, the lessors of rental space or goods, and all persons making sales, including 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" includes all persons engaging in sales of fireworks regardless of the length of time, duration or volume of such sales in any calendar year.

I. "Services" includes all services of every manner and description which are performed or furnished for compensation, including but not limited to:

1. Professional services;
2. Services in which a product or sale or property may be involved, including personal property made to order;
3. Utilities and utility services not constituting a sale of personal property, including sewer, water, solid waste collection or disposal, electrical, and telephone services and repair;
4. The sale of transportation services;
5. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business or occupation, including all services rendered for commission;
6. Any other services, including advertising, maintenance, recreation, amusement and craftsman services;

J. "Time of sale" for installment sales is the time at which the initial payment is made.

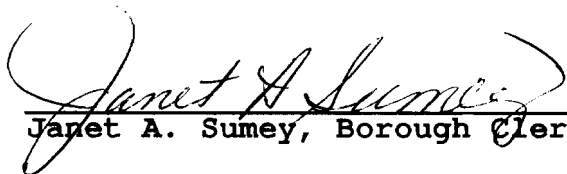
K. "Temporary lodging" is defined as any lodging of less than one month.

Section 2. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 21st DAY OF August, 1990.


James W. Skogstad, Assembly President

ATTEST:


Janet A. Sumey, Borough Clerk