

Introduced by:	Sales Tax Review Committee
Date:	10/08/02
Hearing:	10/22/02, 11/04/02, 11/07/02, 11/19/02 & 12/10/02
Action:	Postponed until 11/19/02
Action:	Amended and Postponed until 12/10/02
Action:	Enacted as Amended
Vote:	8 Yes, 1 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2002-39**

**AN ORDINANCE AMENDING NUMEROUS PROVISIONS OF
KPB CHAPTER 5.18, SALES TAX**

WHEREAS, KPB 5.18 provides authority for sales tax collection and remittance in the Kenai Peninsula Borough; and

WHEREAS, on December 12, 2001, a sales tax review committee was formed to research, review and recommend a simpler, more equitable, more progressive sales tax system; and

WHEREAS, after several public meetings, on August 20, 2002, the sales tax review committee voted to recommend numerous code changes to the assembly; and

WHEREAS, the assembly finds it is in the best interest of the borough to amend the sales tax code as follows:

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

SECTION 1. That KPB 5.18.140 is amended as follows:

5.18.140. General--Administration enforcement authority--Request for ruling--Appeal of determination.

A. The mayor shall have the authority to enforce proper registration, reporting and tax collection requirements imposed in this chapter, including the authority to implement and interpret this chapter, in a manner consistent with the provisions of this chapter and determine the appropriate application of fees as provided in KPB 5.18.670.

B. Any taxpayer under this chapter, or any seller obliged to collect the tax under this chapter, or any borough official may apply to the mayor for a determination on the application of this chapter to an actual fact situation.

- C. Any taxpayer or seller may appeal any written determination made by the mayor or borough administration pursuant to this section or section 250 of this chapter by appealing to the superior court in the Kenai venue district under the rules of appellate procedure governing appeals from administrative agency decisions, within 30 days of the date of the determination; otherwise, a challenge or protest of a determination of the mayor or borough administration made under this section or section 250 of this chapter is barred.

SECTION 2. That KPB 5.18.200(A)(2) is amended as follows:

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, ACUPUNCTURISTS, OCCUPATIONAL THERAPISTS, STATE-LICENSED PSYCHOLOGISTS, PSYCHOLOGICAL ASSOCIATES, STATE-LICENSED MARITAL AND FAMILY THERAPISTS, AND LICENSED CLINICAL SOCIAL WORKERS, AND RETAIL SALES OF MEDICINAL PREPARATIONS, DRUGS OR APPLIANCES FOR WHICH A WRITTEN PRESCRIPTION IS ISSUED FROM ONE OF THE FOREGOING;] Human health care services provided by, and prescription drugs, devices, and supplies prescribed for human use by, a person licensed or certified to provide those services or goods, as applicable, under Alaska Statutes Title 08.

SECTION 3. That KPB 5.18.200(A)(3) is amended as follows:

3. Sales of and subscriptions to newspapers, and [S]subscriptions to [NEWSPAPERS AND] periodicals.

SECTION 4. That KPB 5.18.200(A)(17) is added as follows:

17. Childcare and adult daycare services.

SECTION 5. That KPB 5.18.200(A)(18) is added as follows:

18. Services provided and material consumed in the fulfillment of a manufacturer's warranty, non-manufacturer's warranty, or service agreement. The initial purchase of a manufacturer's warranty, non-manufacturer's warranty, or service agreement is subject to tax at the time of purchase but may be included in the initial sales transaction for application of KPB 5.18.430. Any portion of a repair paid by the customer through a deductible or other means is not exempt under this section.

SECTION 6. That KPB 5.18.210 is amended as follows:

5.18.210. Exemptions/waivers--Exemption for sales for resale.

The following sales of tangible personal property, intermediate services, and rentals 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.
- D. Sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer are exempt under this chapter; except that utilities shall in no case fall within this exemption.
- E. 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.
- F. Services rendered by an employee to his/her employer are not subject to borough sales tax.

SECTION 7. That KPB 5.18.220 is repealed as follows:

[5.18.220. EXEMPTIONS/WAIVERS--EXEMPTION FOR INTERMEDIATE SERVICES AND RENTALS.]

- [A. SALES OF INTERMEDIATE SERVICES TO A BUSINESS THE CHARGE FOR WHICH WILL BE PASSED DIRECTLY BY THAT BUSINESS TO A SPECIFIC BUYER ARE EXEMPT UNDER THIS CHAPTER; EXCEPT THAT PROVISION OF MEALS, TEMPORARY LODGING AND/OR UTILITIES SHALL IN NO CASE FALL WITHIN THIS EXEMPTION.]
- [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.]

SECTION 8. That KPB 5.18.225 is amended as follows:

5.18.225. Exemption for owner builder construction materials--Owner builder certificate required--Penalty for misuse.

- A. Sales of building construction materials and services are exempt under this chapter, but only if:
1. [t]The materials become part of the permanent structure; and
 2. [t]The materials or services are bought by the owner of a residential or other building, for a specific building project; and
 3. [t]The building owner obtains an owner builder tax exemption certificate as provided in this section, and presents the certificate at the time of each sale.
- B. An owner builder may apply for [A] an owner builder tax exemption certificate, on the form provided by the borough. Upon [RECEIPT] approval of a completed application, and a fee of [\$200]\$100 per card, the borough will issue the certificate, which will be valid for one year from the date of purchase.
- C. The following penalties shall be imposed by the borough for misuse of the owner builder certificate:
1. Immediate cancellation and demand for surrender of the owner builder certificate.
 2. Retroactive denial of the exemption, and collection of sales taxes formerly exempted under the owner builder certificate.

SECTION 9. That KPB 5.18.240 is amended as follows:

5.18.240. Exemptions/waivers--Exemptions--Resale [OR INTERMEDIATE SALE EXEMPTION] certificate.

- A. In order to receive an exemption from payment of sales tax under section 5.18.210 [OR 5.18.220], a seller shall obtain a resale [OR INTERMEDIATE

SALE EXEMPTION] certificate as provided in this section, and present the resale certificate at the time of each sale.

- B. A seller may apply for a resale [OR INTERMEDIATE SALE EXEMPTION] certificate, on the form provided by the borough. Upon [RECEIPT] approval of a completed application, and a fee of \$10 per card, the borough will issue the resale certificate, which will be valid for the calendar year for which the application is made.
- C. If a seller is not in full compliance with this chapter, the seller is not eligible for a resale certificate. Full compliance with this section means that a seller does not have an account with a balance due, or does not have a missing or incomplete return outstanding.
- [C]D. [A] The resale [OR INTERMEDIATE SALE EXEMPTION] certificate shall be surrendered when the seller ceases doing business in the borough.
- [D]E. The following penalties shall be imposed by the Borough for misuse of the resale [OR INTERMEDIATE SALE EXEMPTION] certificate:
1. Immediate cancellation and demand for surrender of the resale certificate.
 2. Retroactive denial of the exemption, and collection of sales taxes formerly exempted under the resale certificate.

SECTION 10. That KPB 5.18.400 is amended as follows:

5.18.400. Computation--Addition of tax to total retail price--Tax schedule--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, except as otherwise provided in this section.
- B. [THE REVENUE] Each purchase from a [COIN OPERATED] vending machine shall be treated as an individual sale for application of KPB 5.18.430. [IN GROSS ON A MONTHLY BASIS, WITHOUT REFERENCE TO THE AMOUNT PAID ON A PARTICULAR TRANSACTION.]

SECTION 11. That KPB 5.18.420 is amended as follows:

5.18.420. Computation--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, calculated at the sales tax rate in effect at the time of the sale.

SECTION 12. That KPB 5.18.430 is amended as follows:

The tax shall be applied only to the first \$500.00 of each separate sale, rent or service transaction, except as otherwise provided in this section.

- A. Except as provided below for long-term vehicle leases, 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]B. Services provided on account and billed to the customer on a [MONTHLY] periodic basis are subject to application of the tax on a maximum of \$500.00 of each [MONTHLY] billing, per account. For purposes of this section, any advance payment for services other than to a trust or escrow account is considered to be paid pursuant to a "billing."
- [D]C. 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.
- D. Long-term vehicle leases shall be treated as one transaction per year, and per fractional year, of the lease term. The tax paid for any fraction of a year shall equal the tax paid for a whole year. The sales tax for the entire long-term vehicle lease shall be due and collected at the time of the first payment. Tax shall be calculated at the sales tax rate in effect on the day the lease is signed. There shall be no refund of such taxes should the lease terminate earlier than on its terms. Any extension of the initial lease term shall be treated as a new long-term vehicle lease.

SECTION 13. That KPB 5.18.450 is amended as follows:

- A. The rate of tax to be added to the sale price is based on the place of sale. The place of sale of goods [IS WHERE THE GOODS ARE DELIVERED.] and merchandise is the location of the retail outlet at which or from which delivery was made. If the invoice includes a charge for installation, then the place of the sale for the goods and service is the retail outlet at which or from which delivery was made. When goods are delivered into the borough from a point outside of the borough and the seller maintains an ongoing physical presence in the borough, then the location of the seller's in-borough presence will determine the place of sale. If a seller has no ongoing physical presence in the borough but has established nexus with the borough, the point of delivery will determine the place of sale. If the Seller has no ongoing physical presence in, or nexus with, the borough the sale is not subject to the borough sales tax. For purposes of this section the following terms are defined as shown below:
1. "Nexus" means the seller has established a connection within the borough by use of marketing techniques, such as telephone or door-to-door sales, which are significantly associated with the seller's ability to establish or maintain a market for its goods in the borough.
 2. The "point of delivery" where there is no ongoing physical presence in the borough is the place where physical possession of the goods is transferred to the customer.
 3. "Physical presence" is as defined in KPB Sales Tax Policy 95-02, copies of which are available in the Finance Department.
- B. The place of sale of services is where the services are delivered, which means the place where the services are rendered. The place of sale for rentals is the place where the real property is located, or where the personal property is delivered to the renter. The borough shall determine the place of sale of a good, service, or rental pursuant to this section, and the borough's determination is final.
- [B]C. When there is a question or dispute over the place where services are rendered, a seller of a service may, after requesting and receiving borough approval in writing, collect the tax based on the office location of the business selling such services. Approval of a request to collect a tax at the seller's office location is completely within the discretion of the borough, and shall not be granted if the borough has already determined that the place of sale for the seller's industry is not the office location.
- [C]D. The seller is liable for any sales taxes due because of the seller's incorrect determination of the sales tax rate to be applied.

SECTION 14. That KPB 5.18.500 is amended as follows:

5.18.500. Returns/records/audit--Returns--Filing required--Filing schedule.

- A. Every seller is required to file a sales tax return, on forms furnished by the borough, according to the filing schedule established by the borough for that seller, whether or not any sale was made.
- B. All sellers shall file sales tax returns on a quarterly basis [, EXCEPT AS FOLLOWS:]. The borough may require more or less frequent filing under the following conditions:
1. For the first 6 months after a sales tax certificate is issued, [RETURNS SHALL] the seller may be required to file [FILED] monthly.
 2. When the seller enters into a secured payment agreement with the borough, [RETURNS SHALL] the seller may be required to file [BE FILED] monthly, until all delinquencies are cured [, AND FOR SIX MONTHS THEREAFTER].
 3. For accounts that have had less than [\$1,000]\$6,000 in taxable sales in the preceding twelve (12) months, [RETURNS] sellers may be allowed to file [FILED] annually.
 4. A seller with a delinquent account, which includes a balance due of over \$25, or a missed filing, who fails to cure the delinquency within 15 days of the date of a notice of delinquency sent by regular mail, [SHALL] may be required to file [ON A] monthly [BASIS].
 5. On a case-by-case basis, the borough may determine that an alternate filing schedule is appropriate. In such cases, the seller will be notified in writing of the filing schedule.
- [C. WHERE A NEW CERTIFICATE IS ISSUED BECAUSE OF A CHANGE IN THE FORM OF THE SELLER'S ORGANIZATION, OR A CHANGE IN THE SELLER'S BUSINESS NAME THAT DOES NOT AFFECT THE OWNERSHIP, THE SELLER MAY BE PERMITTED TO FILE QUARTERLY, DEPENDING UPON THE SELLER'S SALES TAX RETURN FILING HISTORY.]
- [D]C. A seller may apply at any time to the borough, in writing, for a change in filing schedule. The borough may consider the seller's sales tax return filing history in making a determination on the application [, BUT NO CHANGE SHALL BE APPROVED UNLESS THE SELLER HAS SUBSTANTIALLY

COMPLIED WITH THIS CHAPTER FOR THE SIX-MONTH PERIOD PRECEDING THE APPLICATION].

SECTION 15. That KPB 5.18.900 is amended as follows:

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]B. “Long-term vehicle lease” means a lease of a motor vehicle, as defined below, for a period of twenty-four months or longer. As used herein a “motor vehicle” is a motor vehicle, as defined in AS 28.40.100(12), that is either required to be registered under AS 28.10.011, or is exempted from registration under AS 28.10.011(6) and (11). However, “motor vehicle” does not include either an “off-highway vehicle” as defined in 13 AAC 40.010(30) or a “snowmobile” as defined in 13 AAC 40.010(49).
- [D]C. “Mayor” or “borough mayor” means the mayor of the Kenai Peninsula Borough or his designee.
- [E]D. “Nonprofit organization” means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual.
- [F]E. “Office location” means the place in the borough where the seller does business, as determined by the borough.
- [G]F. “Person” includes individuals and every person recognized in law and every group of persons who act as a unit.
- [H]G. “Quarter” means trimonthly period established by the finance director.
- [I]H. “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] vending 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] vending 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.

[J]I. "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.

[K]J. "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 persons who conduct 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.

[L]K. "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 but not limited to sewer, water, solid waste collection or disposal, electrical, [AND] telephone services and repair, natural gas, cable or satellite television, and Internet services;

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;

[M]L. "Time of sale" for installment sales is the time at which the initial payment is made.

[N]M. "Temporary lodging" is defined as a service to provide any lodging of less than one month.

N. "Vending machines" means any good or service-dispensing machine or amusement device of any kind.

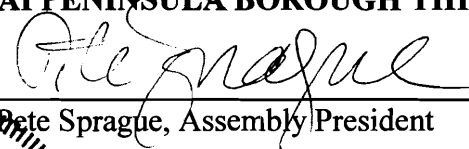
O. "Newspaper" means a publication of general circulation bearing a title, issued regularly at stated intervals at a minimum of at least two weeks, and formed of printed paper sheets without substantial binding. It must be of general interest, containing information of current events. The word does not include publications devoted solely to a specialized field. It shall include school newspapers, regardless of the frequency of the publication, where such newspapers are distributed regularly to a paid subscription list.

P. "Periodical" means any bound publication other than a newspaper that appears at stated intervals, each issue of which contains news or information of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues with respect to continuity of literary character or similarity of subject matter, and sufficiently similar in style and format to make it evident that it is one of a series.

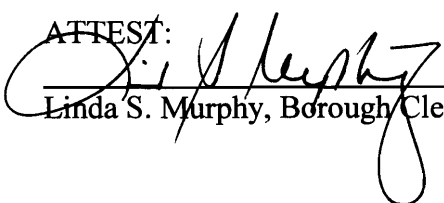
SECTION 16. The borough mayor is authorized to establish policies and procedures necessary to implement these revisions.

SECTION 17. That this ordinance becomes effective April 1, 2003.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 10TH DAY OF DECEMBER, 2002.



 Pete Sprague, Assembly President

ATTEST:


 Linda S. Murphy, Borough Clerk

