

Introduced by: Mayor
Date: 08/09/16
Hearing: 09/06/16
Action: Enacted as Amended
Vote: 7 Yes, 0 No, 1 Absent, 1 Abstention

**KENAI PENINSULA BOROUGH
ORDINANCE 2016-31**

AN ORDINANCE AMENDING SECTIONS OF KPB CHAPTER 5.18 TO UPDATE AND CLARIFY THE BOROUGH SALES TAX CODE, INCLUDING CHANGES TO SEVERAL PROVISIONS ON TAX-EXEMPT SELLERS AND TAXABLE SALES AND SERVICES

WHEREAS, an efficient and unambiguous sales tax code is important for consumers that pay the tax, businesses that collect the tax, and the borough Finance Department that administers the tax; and

WHEREAS, the sales, service and rental sectors have changed over the years, creating uncertainties in the administration of borough tax code provisions written years ago; and

WHEREAS, the borough is always looking to improve the administration of the sales tax code, particularly to ensure clarity and fairness among buyers, sellers and service providers; and

WHEREAS, exempting the smallest of businesses from sales tax collection and remittance responsibilities under the code would reduce the workload on those businesses and the borough, with the value of saving time for all parties more than offsetting the minimal loss of public revenue from exempting such sales from taxation; and

WHEREAS, there is no overriding public purpose for continuing the seasonal tax exemption in code for the sale of nonprepared snack foods sold at non-food businesses such as clothing or hardware stores, package liquor stores and other similar operations that do not sell enough foods to qualify as eligible to accept food stamps; and

WHEREAS, flightseeing tours are an entertainment service, not air transportation between two points, and therefore shall be subject to sales taxes the same as bus tours and charter boat trips; and

WHEREAS, removing the tax exemption for sales by nonprofit organizations that operate an ongoing business location would eliminate an inequitable sales advantage over other businesses; and

WHEREAS, amending code to ensure that occasional or intermittent sales by nonprofits, such as annual cookie, popcorn and candy sales, fund-raising auctions, meals and events, raffle tickets and other irregularly scheduled events continue to be exempt from sales taxes; and

WHEREAS, to the extent allowed under state and federal law, the borough should ensure that out-of-borough and out-of-state businesses collect and remit sales tax on goods and services delivered within the borough, in the interest of equitable treatment of businesses inside and outside the borough; and

WHEREAS, clarity in definition of the point of taxable transaction, such as where the services are provided and where the sales occurred, are helpful not only for consumers and businesses, but also for administration of the sales tax between cities within the borough; and

WHEREAS, business, consumer and borough interests would best be served with a clear and easily administered definition of what constitutes tax-exempt goods used in construction under an owner/builder tax-exempt certificate or a contractor's tax-exempt resale certificate; and

WHEREAS, the sales tax exemption in code for moving freight is inequitable when compared to the taxation of moving people in taxis and chartered buses; and

WHEREAS, limited liability companies and other such business structures should be treated the same for collection of delinquent sales taxes as any other business entity; and

WHEREAS, the borough allows businesses to retain a portion of sales tax collections to help cover the cost of collecting the tax, however, the public interest is best served if the credit is allowed only for businesses that are current in their tax payments or following a payment plan prescribed by the borough;

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

SECTION 1. That KPB 5.18.130(C) and (D) are hereby amended as follows:

5.18.130. General—Seller—Liability to the borough—Successor liability—Corporate officer liability.

...

C. The liability of a purchaser or other entity for outstanding taxes, penalties, interest, fees and costs 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] request for information[REQUEST] submitted to the finance department on a form prescribed by the finance department. The borough shall have 15 days to respond

to the request. Interest and penalty shall continue to accrue on the unpaid balance until such time that the liability is paid in full.

D. [THE PRESIDENT AND ANY OFFICER, EMPLOYEE OR AGENT OF A CORPORATION HAVING] Any officers, employees, agents, members, managers, or partners of a corporation, limited liability company (LLC), limited liability partnership (LLP), partnership, or limited partnership that have control of, supervision of, or charged with the responsibility of filing sales tax returns or remitting sales taxes [IS] are personally liable for any unpaid [CORPORATE] business entity sales taxes, penalties, interest, fees and costs accruing and unpaid to the borough. Dissolution of, or sale of, or other change in the form of the corporation, LLC, LLP, partnership, or limited partnership does not discharge this liability. The signature of any officer, member, manager, or partner on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making returns and payments.

SECTION 2. That the Kenai Peninsula Borough Code is amended by adding a new section to be numbered KP.B 5.18.170 as follows:

5.18.170. General—Notice to Sellers.

If mail sent by the borough to a seller’s last known address is returned by the postal service as undeliverable two or more times, the borough’s obligation to continue sending notices ceases.

SECTION 3. That KP.B 5.18.200 is hereby amended as follows:

5.18.200. Exemptions/waivers—Exemptions.

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

1. Casual and isolated sales or rentals by a seller [WHO DOES NOT REGULARLY ENGAGE] in the business of selling goods or services, or making rentals; but only if:
 - A.]The total annual gross sales for goods sold, services rendered or rentals made by the seller does not exceed [\$1,000.00] \$2,500.00 per year.; OR
 - B. THE SALES OF GOODS DO NOT OCCUR FOR MORE THAN 14 DAYS IN A CALENDAR YEAR, AND ARE NOT MADE THROUGH A DEALER; OR

C. THE SALES OF GOODS ARE MADE BY A REGISTERED BUSINESS TO SELL BUSINESS EQUIPMENT USED IN THE BUSINESS, AND NOT HELD AS INVENTORY;]

2. 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.
3. Sales of and subscriptions to newspapers, and subscriptions to 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, late fees, overdraft fees, and interest charged on past due accounts;
11. Sale of passenger seat tickets by an air charter, air taxi, or commercial airline[. AIR CHARTER AND AIR TAXI SALES ARE EXEMPT] , however flightseeing tours, ground-based wildlife viewing, sport fishing, hunting or any other good or services provide in combination with such flightseeing tours, that take off and return to the same airport or seaplane base on the same day are recreational sales not exempt under this section;
12. [FREIGHT HAULING SERVICES;] Sales of pull-tabs, bingo cards and raffle tickets by charitable organizations licensed by the state;
13. Title insurance premiums;
14. Food purchased with coupons issued under the federal food stamp program;

15. Retail sales of food are exempt in the following circumstances:
 - a. 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;
 - b. When served to clients and staff, and not to the public or for profit, as part of services provided by a nonprofit hospital or other nonprofit or government organization licensed by the State of Alaska for the care of humans;
 - c. Meals delivered by a nonprofit organization to handicapped or senior citizens at their place of residence or meals served on the premises of a nonprofit senior citizens; organization which receives funding from the State of Alaska or a political subdivision of the state: provided that the sale price of such meals does not exceed the cost of delivery or service of such meals;
 - d. Exemptions/waivers - Sales of nonprepared food items by sellers authorized to participate in the federal food stamp program. Sales tax is prohibited on [ALL] sales of nonprepared food items sold by sellers authorized to participate in the federal food stamp program from September 1 until May 31 of each year. These food items exempted from sales tax include those which have been previously granted exemption in KPB 5.18.200(14) for food purchased with coupons issued under the federal food stamp program.
16. Senior, disabled resident, and disabled veteran housing rent. Rental payments for a dwelling unit for a permanent place of abode by a resident who is at least 65 years of age, or who is a disabled veteran or a disabled resident. Disabled veteran has the meaning provided in KPB 5.12.105(F)(3), and the term disabled resident has the meaning provided in KPB 5.12.110, as those provisions are now enacted or may be hereinafter amended. Dwelling unit means a house, apartment, or room in a residential facility such as congregate housing or assisted living. Permanent means the tenant has lived within the Kenai Peninsula Borough for a minimum of six months and is a resident of the State of Alaska. The landlord must accept an affidavit on a form provided by the borough or otherwise acceptable to the borough administration from the tenant as proof of age and eligibility for this exemption. If any person under 65 years of age, other than a spouse, resides in the dwelling

unit with a qualifying senior, the exemption may not be granted unless the senior is the principal source of support for such person less than 65 years of age, or unless the person qualifies as a disabled veteran or a disabled resident. This exemption shall also apply to a resident at least 60 years old who is the widow or widower of a person who qualified for this exemption as a senior citizen or a disabled veteran.

17. Childcare and adult daycare services.
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.
19. Services provided by a cooperative nonprofit organization recognized by either the State of Alaska or the federal government to assist in preventing, containing, and removing spilled crude oil or refined petroleum products, and to cooperate with governmental agencies, private organizations, and industry in preventing, containing, and removing any spills of crude oil or refined petroleum products upon waters in the Kenai Peninsula Borough and the adjacent lands.
20. Sales or services provided by an organization that has obtained from the Internal Revenue Service and provided proof to the borough of a 501(c) exemption ruling, other than under 501(c)(12), so long as the sales, services or rentals are occasional or intermittent in nature and not provided as an ongoing trade or business that is regularly carried on from an established physical location.

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

1. Retail sales, services and rentals to:
 - a. An organization that has obtained a 501(c) exemption ruling from the Internal Revenue Service, as long as proof of such ruling is provided to the borough administration;
 - b. A church that is organized as a nonprofit corporation under the laws of the State of Alaska, as long as proof of such incorporation is provided to the borough administration;

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 to federally recognized Indian tribes.
- C. The following classes of sellers are exempt from the provisions of this chapter:
- [1. AN ORGANIZATION THAT HAS OBTAINED A 501(C) EXEMPTION RULING FROM THE INTERNAL REVENUE SERVICE, AS LONG AS PROOF OF SUCH RULING IS PROVIDED TO THE BOROUGH ADMINISTRATION; BUT ONLY UNDER THE FOLLOWING CONDITIONS:
 - A. THE SALES ARE NOT LIQUOR SALES OR SALES OF FOOD SOLD THROUGH REGULARLY CONDUCTED RESTAURANT TYPE OPERATIONS;
 - B. THE ORGANIZATION IS EXEMPT UNDER A SUBSECTION OTHER THAN 501(C)(12) OF THE INTERNAL REVENUE CODE.]
 - 1[2]. Groups sponsored by public or nonprofit schools.

SECTION 4. That KPB 5.18.210 is hereby 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 who deals 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] part of the permanent structure.
- 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
 1. utilities shall in no case fall within this exemption[.]; and booking commissions, contracted or subcontracted guides, and lodging or other services sold as components of a recreational package are considered intermediate sales for resale, taxable at the final sale of the package to the buyer.

All components of any such package sale shall be taxed in accordance with KPB 5.18.430.

- [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 5. That KPB 5.18.230(C) is hereby amended as follows:

5.18.230. Exemptions/waivers—Exemptions—Nonprofit or government exemption certificate.

...

- C. A buyer may apply for a nonprofit or government exemption certificate, on the form provided by the borough. Upon receipt of a completed application[, AND A FEE IN THE AMOUNT LISTED IN THE MOST CURRENT KENAI PENINSULA BOROUGH SCHEDULE OF RATES, CHARGES AND FEES] the borough will issue the certificate, which will be valid for the calendar year for which the application is made.

...

SECTION 6. That KPB 5.18.240 is hereby amended by adding a new subsection (F) as follows:

5.18.240. Exemptions/waivers—Exemptions—Resale certificate.

...

- F. A business within the borough that sells goods to a business located outside the borough for resale by that business outside the borough shall report the sale as a tax-exempt sale for resale, regardless whether the buyer has obtained a resale certificate from the borough.

SECTION 7. That KPB 5.18.250(C) is hereby amended as follows:

5.18.250. Exemptions—Seller's liability for incorrect determination—Buyer's protest—Appeals.

...

- C. If the seller determines that a sale[S] is exempt, the seller can request a determination on whether a sale is exempt by filing a

certificate of protest form with the borough, no later than 60 days after the date of sale. The seller shall continue to collect the tax at the time of sale, until the seller receives a determination from the borough.

...

SECTION 8. That KPB 5.18.310(E) is hereby amended as follows:

5.18.310. Registration—Certificate issuance—Display required—Compliance agreement—Bond requirements.

...

- E. [UPON PAYMENT OF THE FEE IN THE AMOUNT LISTED IN THE MOST CURRENT KENAI PENINSULA BOROUGH SCHEDULE OF RATES, CHARGES AND FEES, THE MAYOR WILL ISSUE A] A duplicate sales tax certificate will be issued to any seller whose certificate has been lost or destroyed.

SECTION 9. That KPB 5.18.430(C) and (D) are hereby amended as follows:

5.18.430. Computation—Maximum tax.

...

- C. Services provided on account and billed to the customer on a periodic basis are subject to application to the tax on a maximum of \$500.00 of each 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. Each night's rental of each individual [ROOM] unit of temporary lodging shall be considered a separate transaction and therefore the maximum tax computation shall be calculated on a per [ROOM] unit per night basis. Rental by a single person or entity of an entire facility, such as a lodge or hotel for multi-person overnight use, does not affect this provision that each night's rental of each individual unit shall be considered a separate transaction.

...

SECTION 10. That KPB 5.18.450 is hereby amended as follows:

5.18.450. Tax jurisdiction—Office location of seller.

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 and merchandise is the location of the retail outlet at which or from which delivery was made. This provision applies to goods delivered to buyers within the borough and to goods delivered to buyers outside the borough but within the state of Alaska. 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 taxable connection within the borough by use of marketing techniques, such as directed advertising in the borough via telephone or internet, or door-to-door sales within the borough, or by use of contract workers or contract or commission agents or businesses, which are [SIGNIFICANTLY] associated with the seller's [ABILITY] efforts to establish or maintain a market for its goods or services, deliver those goods or services, or provide warranty or other repair or return services in the borough.

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. Sellers located outside the borough but which fulfill orders for buyers inside the borough that were solicited or facilitated by commission or fee agents, independent contractors or other persons located in the borough associated or affiliated with the seller shall be responsible for collecting and remitting sales tax on those orders, unless the tax is collected and remitted by the agent or contractor.

[B]C. 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 freight, delivery, and courier services is the pickup location. The place

of sale for services involving the transportation of passengers is the location where the passengers are picked up. The place of sale for vehicle towing services is the place where the vehicle is delivered. 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.

[C]D. 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.

[D]E. 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 11. That KPB 5.18.500(A) is hereby 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. The borough may exempt a seller from the requirements of this section if the borough determines the seller is completely exempt from collecting and remitting sales tax.

...

SECTION 12. That KPB 5.18.510(B) is hereby amended as follows:

5.18.510. Returns/records/audit—Returns—Contents.

...

B. The borough reserves the right to reject a filed return for failure to comply with the requirements of this section, for one year from the date of filing. The borough shall give written notice to a seller that a return has been rejected, including the reason for the rejection. In the event the borough rejects a tax return, any interest and penalties later assessed by the borough for nonpayment of full taxes shall start accruing with the

original filing date of the tax return, not the date that the return was rejected.

SECTION 13. That KPB 5.18.530 is hereby amended as follows:

5.18.530. Returns/records/audit—Returns—Credit for costs of collection.

A. If a return is filed and [TAX PAYMENTS ARE] payment in full is remitted by the filing deadline, a seller in full compliance with this chapter may retain 5% of the tax collected, to a maximum of \$1,000 per quarter, to cover the costs of collecting the tax.

B. If the seller is not in full compliance with this chapter, the seller is not eligible for and may not retain the 5% credit.

C. [FULL COMPLIANCE FOR THE PURPOSES OF THIS SECTION MEANS THAT A SELLER DOES NOT HAVE] A seller is not in full compliance if the seller:

1. has an account with a balance due, or
2. has [does not have] a missing or incomplete return outstanding, or
3. is not in compliance with a borough-approved payment plan.

SECTION 14. That KPB 5.18.580 is hereby amended as follows:

5.18.580. Returns/records/audit—Audit—Protest.

A. If the seller wishes to dispute the amount of the estimate, or the results of an examination or audit, the seller must file a written protest with the borough, within 30 days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:

1. the seller's justification for reducing or increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or
the seller's reasons for challenging the examination or audit results.

B. In processing the protest, the borough may hold an informal meeting or hearing with the seller, either on its own or upon request of the seller, and may also require that the seller submit to an audit.

C. The borough administration shall make a final written determination on the seller's protest, and mail a copy of the determination to the seller.

D. If a written protest is not filed within 30 days of the date of the notice of estimated tax or the result of a review, audit or examination, then

the estimated tax, review, audit or examination result shall be final, due and owing.

SECTION 15. That KPB 5.18.660(B) is hereby amended as follows:

5.18.660. Enforcement—Sales tax liens.

...

B. Prior to filing a sales tax lien, the [MAYOR] borough shall cause a[N ADDITIONAL] written notice of intent to file to be mailed to the last known address of the delinquent seller.

SECTION 16. That KPB 5.18.670 is hereby amended as follows:

5.18.670. Enforcement—Fees.

Fees in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees shall be imposed and collected pursuant to this chapter for the following purposes:

[A. ISSUANCE OF A DUPLICATE SALES TAX CERTIFICATE;]

[B]A. Missing filing fee;

[C]B. Reinstatement to active roll;

[D]C. Audit estimate preparation fee at a rate established by regulation but not to exceed \$100.00.

SECTION 17. 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:

...

Q. "Recreational sales" means sales where the seller provides recreational services and rentals, except automobile rentals, to the buyer, either separately or in a combination, at an aggregate price, including, but not limited to guiding, charters, sightseeing tours, flightseeing tours, outfitting or equipment rentals, instructional classes or lessons, and beauty or spa services [TEMPORARY LODGING INCLUDED WITH SUCH SALES].

R. "Unit" means a room or single unit that is customarily advertised and rented at a flat rate regardless of the number of occupants.

SECTION 18. That this ordinance takes effect on January 1, 2017.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2016.

Blaine Gilman, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Bagley, Cooper, Dunne, Johnson, Knopp, Ogle, Gilman

No: None

Absent: Welles

Abstained: Holmdahl