



KENAI PENINSULA BOROUGH

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Blaine Gilman, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Mike Navarre, Mayor *MN*
Craig Chapman, Finance Director *C Chapman*

FROM: Larry Persily, Assistant to the Mayor *LP*

DATE: July 28, 2016

SUBJECT: 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 (Mayor)

This ordinance proposes multiple changes in the borough sales tax code, several of which are purely administrative in nature but many of which would change the rules for charging, collecting and remitting sales taxes on goods and services. The intent of this ordinance is to improve the clarity of the sales tax code, make administration of the code more efficient for sellers and the borough, and make appropriate policy changes in the code as to what is and is not taxable. Some of the exemptions and definitions have not been revisited in years and should be updated to reflect today's commerce, which is more about services and less about goods.

The proposed tax code changes in this ordinance would:

- Exempt the smallest of businesses in the borough from collecting sales tax. Eliminating borough sales tax collections for the fewer than 800 businesses that report under \$2,500 a year in sales would cost the borough less than \$20,000 a year in revenues, but would save the businesses and the borough far more than that in time and administrative chores. The small businesses would still be required to register with the borough, which could conduct random checks to ensure that sellers have not exceeded the \$2,500 limit without collecting sales tax.
- In the interest of efficiency, the ordinance would give the borough the leeway to exempt certain businesses from filing tax returns if those sellers are completely exempt from collecting sales taxes.
- Require the collection of sales tax year-round on all foods sold by stores that do not sell enough to be eligible to accept food stamps. Currently, non-prepared foods sold at such businesses are covered by the seasonal tax exemption. However, there is not an

overriding public purpose to continuing the tax exemption for the sale of snack foods, candy, soft drinks and such items sold at clothing or hardware stores, package liquor stores, vending machines, and other similar operations. The food sales affected by this amendment are far outside the realm of essential groceries.

- Make the distinction in code that while air transportation and charter flights between two points would continue to be exempt from sales tax, as required by state and federal law, the borough considers flightseeing tours as an entertainment or recreational service, not air transportation, and should be subject to sales tax the same as bus tours and charter boat trips. As proposed, only sightseeing flights that take off and land at the same airport on the same day would be taxable.
- Remove the tax exemption for sales by nonprofit organizations that operate at an ongoing business location. The intent is to eliminate an inequitable sales advantage over other businesses. Sales, services or rentals by nonprofits that are occasional or intermittent in nature and not provided as an ongoing trade or business at an established physical location would continue to be exempt from taxes, such as Girl Scout cookie sales, Boy Scout popcorn sales, fund-raising auctions and dinners, and other such annual, occasional or sporadic nonprofit events. (Purchases by nonprofit organizations would continue to be tax-exempt.)
- Add an explicit provision in code that sales of pull-tabs, bingo cards and raffle tickets by charitable organizations licensed by the state are exempt from sales tax. This matches current practice and should be added to code to avoid any doubt.
- Make clear that to the extent allowed under federal law, out-of-borough and out-of-state businesses must collect and remit sales tax on goods and services delivered within the borough. The public policy for this code revision is the equitable treatment of businesses inside and outside the borough — though the borough cannot overcome federal restrictions that prohibit the taxation of online sales delivered into the borough if the seller lacks any sort of physical, contractual or employee presence in the borough.
- Clarify that sales by a business in the borough to a business outside the borough for purposes of resale are exempt from sales tax, regardless whether the non-borough business has obtained a resale certificate from the borough.
- Clarify that sales by a business in the borough to a buyer outside the borough, but within the state, is subject to sales tax — unless the sale is for resale.
- Define that only those materials purchased by a licensed contractor that become part of a permanent structure are exempt from sales taxes, the same definition as in code for materials purchased by owner/builders. This is to clarify that other materials purchased by a licensed contractor for use in a building project, such as tools, are not exempt from sales tax.
- Remove the tax exemption for moving freight. The borough collects sales tax on moving people in taxis and chartered buses, and there is no public policy justification to treat the moving of goods differently than moving people.

- State clearly that the borough may hold personally liable for delinquent sales taxes the officers, managers, partners and others in limited liability companies and similar business entities who have control or responsibility for filing tax returns — the same as the borough treats other business owners.
- Clarify in code that when components of a recreational package — such as guiding, lodging and other services — are not taxed as an intermediate service between the service provider and seller, they are taxable at the final package sales point to the buyer.
- Clarify that even if someone rents an entire multi-unit facility, such as a lodge or hotel for multi-person overnight use (such as a wedding party), the code provision still applies that each night's rental of each individual unit shall be considered a separate taxable transaction.
- Eliminate the charge for duplicate tax registration certificates, and also the borough fee for government and nonprofit exemption certificates.
- Specify that businesses that want to retain a portion of sales tax collections to help cover their cost of collecting the tax must be current in their tax filings and tax payments or following a payment plan set by the borough. It is not in the public's interest to allow a business to retain tax collections if that business owes money to the borough.
- Specify in code that the taxable point of sale for freight, delivery, courier and passenger services (such as taxis) is the pickup location; and that the taxable point for vehicle towing services is the place where the vehicle is delivered. It is just easier to determine the delivery point for a tow (and the city of tax jurisdiction) than the pickup point somewhere near a highway milepost marker.
- Clarify that if the borough rejects a tax return, any interest and penalties later assessed by the borough for nonpayment of taxes would start accruing with the original filing date of the tax return, not the date that the return was rejected.