

Sales and property tax code revision proposals

Prepared by the Office of the Mayor, Kenai Peninsula Borough

SALES TAXES

	<u>Code section</u>	<u>Description</u>	<u>Gain or loss</u>	<u>Revenue impact</u>	<u>Proceed</u>
1.	5.18.430	Raise the cap on taxable sales (goods and services) from \$500 to \$1,000 per transaction, effective Jan. 1, 2017. The cap has not increased since it was established in 1965 and is at the low end of municipal sales tax caps in Alaska. Adjusted for inflation, \$500 in 1965 is equal to more than \$3,000 in 2016. The borough assembly on June 21 approved the ordinance to raise the taxable transaction limit, to be placed before voters in the Oct. 4 general election. Voter approval is required, per KPB 5.18.430. The assembly rejected an administration proposal to link the new cap to inflation, with an adjustment every five years, starting Jan. 1, 2022, subject to assembly approval at each adjustment. That ongoing adjustment, based on the Alaska Department of Labor Anchorage Consumer Price Index, would have taken effect Jan. 1 of the year immediately after each five-year calculation.	Gain	Raising the cap would generate an estimated \$3.6 million for the borough (a full year) and more than \$1 million for cities. If the change takes effect Jan. 1, 2017, the gain to the borough for FY17 is estimated at less than half the annual amount, due to tax collection periods. (These estimates assume no change in the taxation of residential rent; see below.)	Approved by assembly for Oct. 4 ballot.
2.	5.18.200 A.16.	Exempt residential rent from sales tax if the maximum taxable transaction is increased. The increase in the cap on taxable transactions to \$1,000 would disproportionately affect tenants of residential property who would pay the higher sales tax on a recurring basis each month -- a significant burden when multiplied by 12 monthly rent payments a year. Exempting residential rent from sales taxes would help serve the public policy objective of affordable rental housing. This change in code is included in the ordinance that will go before voters in the Oct. 4 general election, as part of the ordinance to raise the taxable transaction limit.	Loss	The loss in revenue to the borough is estimated \$700,000 for a full fiscal year, and almost \$600,000 a year to the cities.	Approved by assembly for Oct. 4 ballot.
3.	5.18.200 C.	Specify that purchases by a nonprofit are exempt from sales taxes, but sales by a nonprofit are taxable -- the buyer is the taxpayer, not the nonprofit. Currently, all sales by nonprofits are exempt from sales taxes. The code revision would continue to exempt from taxes occasional or intermittent sales such as Girl Scout cookies, Boy Scout popcorn, sales at auctions and similar events such as fund-raising luncheons held by church, school or nonprofit organizations separate from an ongoing trade or business operation (such as a retail shop) in a physical location, which would be subject to sales tax. The code revision also would clarify current practice that pull-tab, bingo and raffle sales licensed by the state are exempt from sales tax.	Gain	Estimated at more than \$100,000 a year.	
4.	5.18.200 C.	Amend code to remove any ambiguity that liquor and food sales by a nonprofit organization at an ongoing business operation in a physical location are subject to sales taxes.	Gain	Estimated at less than \$50,000 a year.	

5.	5.18.200 A.15.d.	Sales of non-prepared foods would be subject to year-round sales tax if the seller is not authorized to accept food stamps. This change would make snack bars, candy, chips, soft drinks and such sold at hardware stores, variety stores and other similar retail counters subject to sales tax, eliminating the seasonal tax exemption for non-prepared foods sold at such locations.	Gain	Estimated at less than \$50,000 a year.	
6.	5.18.200 A.15.d.	Vending machine food sales would no longer be treated as tax-exempt non-prepared foods.	Gain	Estimated at less than \$50,000 a year.	
7.	5.18.200 A.11.	Clarify that flightseeing tours that take off and return on the same day at the same location in the borough (regardless if there is an intermediate stop along the way) are a service, subject to sales tax.	Gain	Estimated at more than \$200,000 a year.	
8.	5.18.210 D.	Clarify that booking commissions, contracted or subcontracted guides and lodging or other services sold as components of a recreational package are considered intermediate services for resale, and are therefore exempt from sales taxes, but the business that makes the final sale to the buyer of the recreational package is obligated to collect and remit sales tax on the full package price that includes all of the components. This has been an issue with bundled packages that include a charter boat trip, services and overnight accommodations and needs to be stated clearly in code.	Negligible		
9.	5.18.900 Q.	Clarify that "recreational sales," as defined in code, includes instructional classes or lessons and other services included in an aggregate price. This would help administer the provision at 5.18.430 G. that such recreational sales shall be treated on a per-person, per-day basis for calculating the sales tax. Borough staff has seen an increase in all-inclusive lodges that bundle services into a single price.	Negligible		
10.	5.18.430 D.	Clarify in code that a rental of an entire lodge or hotel for multi-person overnight use, such as a wedding party, does not exempt the rental from the borough's per-night, per-room application of sales taxes. However, this per-night, per-room taxation would not apply to a facility such as a work camp that usually and customarily is rented out as an entire unit to a company for use by multiple employees or contractors.	Negligible		
11.	5.18.200 A.	For the sake of administrative and taxpayer convenience, and to reduce paperwork and tax filings, set a \$2,500 annual cap in sales before a small or occasional, part-time or temporary seller would be required to collect and remit sales taxes. This would eliminate insignificant tax returns from almost 2,000 filers (based on fiscal year 2015). Such businesses, however, would still be required to register with the borough each year, attesting to their expected sales, but would not be required to file tax returns. This no-tax registration could be handled under a different (simplified) system than taxable sellers, in an effort to reduce the workload for all parties. If a business during the year determines it has passed the \$2,500 threshold, it would be required to start collecting and remitting taxes to the borough and filing returns. This change in code would have minimal consequences in tax revenues, but would have significant benefit to the borough and small sellers from reduced tax filings.	Minimal loss	The change would reduce revenue to the borough and cities by less than \$50,000 a year.	
12.	5.18.500	Code requires "all sellers" to file an application for a certificate of registration and file returns, even if they are completely exempt from collecting and remitting sales taxes. Staff recommends changing code to give the borough the authority to exempt from tax reporting requirements those sellers that are "completely exempt from collecting and remitting sales tax."	Neutral	Paperwork reduction for all parties, with no noticeable impact on revenues.	

13.	5.18.450 A. and B.	Strengthen borough code to establish as clearly as possible what constitutes "nexus" for determining whether a seller or service provider located outside the borough has established a taxable connection in the borough, such as sellers that market directly in the borough or have commission agents soliciting or taking orders in the borough, or service providers that similarly seek to establish or maintain a market for their services delivered in the borough.	Small gain	Unable to estimate.	
14.	5.18.450 B.	Clarify in code that sales tax is due on orders delivered in the borough by sellers located outside the borough if a commission or fee agent, contractor or other person in the borough and associated with the seller solicited or facilitated the order. The seller that fulfilled the order would be responsible for collecting and remitting the sales tax, unless the tax is collected and remitted by the agent or contractor.	Small gain	Unable to estimate.	
15.	5.18.450	Clarify that sales taxes on taxi fares shall be calculated based on the pick-up location of the fare; that sales taxes on freight and courier services shall be based on the pick-up location; and amend code to specify that towing services shall be taxed at the point of delivery of the vehicle (as the pick-up location often is a remote site along a highway).	Neutral	Clarifies point of taxation, with no impact on revenues.	
16.	5.18.200 A.12.	Remove the sales tax exemption for freight services.	Small gain	Unable to estimate.	
17.	5.18.240	Clarify that a business in the borough that sells goods to a business located outside the borough for resale by that business shall report the sale as a tax-exempt sale for resale, regardless whether the business outside the borough has a resale certificate from the borough. The intent of this revision is remove any uncertainty when a business in the borough, such as a jewelry maker, sells wholesale directly to a business out of the borough (or out of state) over which the Kenai Borough has no authority to require that the buyer apply for and maintain a resale certificate.	Small gain	No impact expected on resale sales; small gain possible in retail sales.	
18.	5.18.450 A.	Clarify in code that buyers outside the borough that purchase goods from sellers in the borough for their own use or benefit -- not for resale -- shall be liable for the sales tax on those goods, regardless that it the goods are delivered to the buyer outside the borough.	Small gain	Unable to estimate	
19.	5.18.200 B.	Add federally recognized tribes to the list in code of organizations exempt from paying sales tax. This would serve to codify existing borough practice.	Neutral	Adopts current practice.	
20.	5.18.210 C.	Amend the tax exemption for materials used in building construction by a licensed contractor to limit the exemption to materials that become part of the permanent structure, which is the same definition in existing code for materials sold under the owner-builder exemption at 5.18.225 A. This change would reduce a frequent enforcement issue and uncertainty for businesses that sell to contractors.	Small gain	Unable to estimate.	
21.	5.18.200 A.10.	Add late fees, overdrafts fees and interest charged on past-due accounts to the list of financial service transactions exempt from sales tax. These changes would codify current practice.	Neutral	Adds current practice to code.	

Administrative revisions to sales tax code

22.	5.18.530	Allow a business to retain 5% of the tax collected only if the business is paid in full on sales taxes or has entered into a borough-approved payment plan and is in compliance with that plan for back taxes owed.	Negligible		
23.	5.18.510 B.	Clarify that in the event the borough rejects a sales tax return, any interest and penalties shall start accruing with the original filing deadline of the return rather than the date the return was rejected. The borough reserves the right to reject a sales tax return for failure to comply with borough code up to one year from the date of filing.	Neutral	N/A	
24.	5.18.130 C.	Clarify the process for a new owner of a business to request from the borough the amount of the tax liability owed by the former owner, and state clearly that any interest and penalty shall continue to accrue until the liability is paid in full.	Neutral	N/A	
25.	5.18.230 C. and 5.18.310 E.	Eliminate the fee charged to applicants for government and nonprofit tax-exempt certificates, and delete the fee for duplicate certificates.	Negligible	N/A	
26.	5.18.670 A.	Eliminate the fee for issuing a duplicate sales tax certificate.	Negligible	N/A	
27.	5.18.130 D.	Clarify that the borough may initiate enforcement and collection actions for sales tax debt against "any officers, employees, agents, members, managers or partners of a corporation, limited liability company, limited liability partnership or limited partnership," to the fullest extent allowed by state and federal law.	Neutral	N/A	
28.	5.18.580 A.	Require sellers that want to dispute an estimate of their tax liability must do so in writing.	Neutral	N/A	
29.	5.18.580 C.	For administrative clarity, add "final" to the determination of a protest covered by this section.	Neutral	N/A	
30.	5.18.580 D.	Add a new section to state that written protests must be submitted within 30 days of a notice of estimated tax owed or the result of an audit or review or examination, or the determination shall be final, due and owing.	Neutral	N/A	
31.	5.18.210	Code clean-up to delete E. and F. dealing with resale exemptions for third-parties and employer-employee relationships.	Neutral	N/A	
32.	5.18.430 D.	Correct a typographical error and clarify " ... each night <u>of</u> each <u>rental unit</u> ..."	Neutral	N/A	
33.	5.18.170	Add a provision dealing with sellers who have moved and left no forwarding address: "If mail sent by the borough to the seller's last known address is returned more than two times, the borough's obligation to keep sending notices ceases."	Neutral	N/A	

Sales tax options no longer under active consideration

1.	5.18.450	As much as borough staff researched the taxability of online purchases delivered into the borough, federal law appears to block any effort to equalize the tax status of online sales with local businesses. There are proposals before Congress that would allow states and municipalities to fully tax online sales of businesses that lack a physical presence or nexus in the tax jurisdiction (such as a local store), but no action is expected this year. The borough could revisit the issue if Congress changes the law.			
2.	5.18.200 A.15.	Leave unchanged the interpretation of non-taxable, non-prepared foods. Though staff looked at how the interpretation of code might be tightened to exclude such items as energy drinks and candy bars — which are not, as a matter of good public policy, in the same category of nutritional foods as milk, produce and fresh meat — the collective decision was that no administratively feasible definition exists that would not place an undue burden on business owners and create enforcement issues. The problem would be to clearly define prepared foods (taxable) as separate from non-prepared foods (non-taxable) in a way that is understandable and enforceable — and fair. Though a specific list might seem possible, the problem with such a list is what's missing, what's debatable (is a chocolate-covered energy bar "candy"), and what's open to misinterpretation.			
3.	New section	Staff considered but rejected an additional sales tax or excise tax on alcohol, similar to the alcohol taxes in two boroughs and four cities in Alaska where the rate varies from 3% to 6%. Alaska Statute 04.21.010 deals with municipal taxation of alcohol and there would be legal considerations if the borough wanted to impose a tax on alcohol sales in addition to its general sales tax.			
4.	New section	Staff considered but rejected a "raw fish tax" as is assessed in five boroughs and seven cities around the state. The tax would be assessed and collected at the point that the commercial fishing permit holder sells the catch to a processor or wholesaler, similar to the other municipalities and similar to the state's Fisheries Business Tax (AS 43.75). The tax would be assessed on the price paid to the commercial fisherperson. The borough received \$630,000 in FY2015 as its share of the state fish tax that ranges between 3% and 5% depending whether the processor is floating, shore-based or a cannery. Cities receive a separate share from the state.			
5.	New section	Staff considered but rejected an additional sales or excise tax on tobacco products (cigarettes, cigars, loose tobacco, chewing tobacco and electronic cigarettes). The state and several municipalities in Alaska impose substantial taxes on cigarettes and other tobacco products.			
6.	New section	Staff considered but rejected an additional tax on retail marijuana sales.			
7.	New section	The staff strongly considered a \$10-per-box tax on packed catches from charter fishing customers. This excise tax would be assessed, collected and remitted by either the charter boat operator, if the operator or employee or agent packs the fish, or a processor, if the customer delivers the fish to a processor for packing. Sitka and Gustavus impose such a tax; Sitka collected \$133,000 in 2015. Gustavus requires a tax sticker on each fish box. But administering such a tax on the Kenai Peninsula would be a lot harder than in Sitka or Gustavus, due to the highway connection out of town. Equal enforcement in the borough would be difficult, as many charter customers could pack their fish on their own and drive the catch out of town -- tax-free. For those reasons, staff decided not to recommended the tax.			

8.	5.18.430 D.	Borough code currently requires payment of sales tax on motor vehicle leases on an annual basis, even though the leases generally are paid monthly. This allows a lessee to pay sales tax on a single invoice rather than 12 invoices. Changing to sales tax liability on each month's invoice would impose a substantially heavier tax burden on vehicle lessees. Staff recommends no changes in this provision.			
9.	5.18.450	Staff considered clarifying the taxable point of sales/services, such as when a service provider maintains a place of business in one tax jurisdiction within the borough but travels to another jurisdiction to provide the service. Such as a plumber with a shop in Soldotna who repairs a pipe for a homeowner in Kenai and does some of the work at the residence and some at the shop. But after much deliberation, staff decided existing code works well enough in determining the point of taxation.			
10.	5.18.225	Staff considered but rejected a change in code to establish an annual payment-in-lieu-of-taxation card for owners/builders to lessen the potential for overuse of tax-exempt certificates and to reduce enforcement problems with businesses presented with the certificates. An owner/builder would apply for and receive a tax-exempt card good for one calendar year. Staff determined that existing code, which provides exemption certificates valid for one year from the date of purchase, rather than a calendar year, is preferable to a new system, and any enforcement issues can be dealt with under existing code.			
11.	5.18.200 A.6.	Staff considered a recommendation to remove the sales tax exemption for real property sales, as an approach to obtain accurate pricing information for the assessor, but decided other avenues to obtain sales information might be more appropriate.			
12.	5.18.610, .620 A., .630 and .640	Staff considered elimination but decided to retain the criminal provisions for violations of the sales tax code.			
13.	5.18.420	Code currently requires sales tax on equipment operating leases but not on equipment finance leases. Staff recommends no change in this section, as a financing lease is similar to a loan -- which is not taxable.			
14.	5.18.555 A.	Staff considered but rejected amending code to allow the finance director the discretion to accept amended returns more than a year after the original due date of the return.			

PROPERTY TAXES

	<u>Code section</u>	<u>Description</u>	<u>Gain or loss</u>	<u>Revenue impact</u>	<u>Proceed</u>
1.	5.12.105 A.	Implement a gradual phase-out of the optional senior exemption (i.e. the second \$150,000 property tax exemption) for senior citizens who are not 65 years old on or before Dec. 31, 2017. This change would not affect the mandatory senior exemption on the first \$150,000 in property value for senior citizens, or the residential property tax exemption of \$50,000. The phase-out of the optional senior exemption would not affect any property owners age 65 or older as of Dec. 31, 2017; they would continue to receive that full second \$150,000 exemption as long as they remain otherwise eligible for the benefit. For seniors who turn 65 between Jan., 1, 2018, and Dec. 31, 2020, the exemption would be \$100,000 for as long as they remain otherwise eligible. For seniors who turn 65 between Jan. 2, 2021, and Dec. 31, 2023, the exemption would be \$50,000 for as long as they remain otherwise eligible. For seniors who turn 65 on or after Jan. 1, 2024, there would be no additional exemption beyond the first \$150,000 in property value and the \$50,000 exemption allowed to all residential property owners in the borough.	Gain	No change in borough revenues until the phase-out begins in 2018. Though the lost revenue to the borough from the senior property tax exemption would climb along with the aging population and property values, phasing out the second \$150,000 exemption would reduce that cost to the borough and service areas by an estimated \$200,000 in 2018, gradually increasing over time as the number of seniors with the exemption declines.	
2.	5.12.100	Adopt a definition in code of "community purpose" as it relates to the existing property tax exemption. There is no definition in code. Staff recommends adopting the definition provided by the Alaska Association of Assessing Officers, which references "the exclusive use of property ... which benefits the general public."	Negligible	N/A	
3.	5.12.100	Add a requirement that requests for community-purpose, nonprofit, religious, charitable, cemetery, hospital or educational exemptions from property taxes must be filed by March 31 of the tax year and must be filed on a form prescribed by the assessor. The intent in providing and requiring a form is to encourage consistency and completeness in information to make a determination.	Neutral	N/A	
4.	5.12.105 and 5.12.115	Amend code to state clearly that applicants for the senior citizen, disabled veteran or residential property tax exemption are not eligible to receive the borough exemption if they have applied for or received a similar residency-based exemption in that same year in another tax jurisdiction outside the borough.	Unknown	Probably minimal.	

Administrative revisions to property tax code

5.	5.12.052 A. and .060 B.	Amend membership of the Board of Equalization to establish a pool of four alternates (instead of two alternates, in current code), and amend code to establish that a quorum shall consist of three board members (instead of five members, in current code). The intent is to make it easier to achieve a quorum of members in order to expedite hearing decisions for property owners.	Neutral	N/A	
6.	5.12.050 F. and .055 B.	Allow the borough clerk to notify property owners of Board of Equalization meetings by email rather than mail, but only if the property owner consents to email. The same email provision would be added to code for information requested of the borough by property owners in assessment appeals before the board.	Neutral	N/A	
7.	5.12.060 D.	In the interest of saving time, delete the requirement that the Board of Equalization read aloud its procedures at the start of every meeting.	Neutral	N/A	
8.	5.12.060 G. and L.	Reduce from 30 minutes to 15 minutes the time allowed for each side to present its case at the Board of Equalization (code would continue to allow the board to grant exceptions).	Neutral	N/A	
9.	5.12.060 Q.	Amend code to make clear the Board of Equalization may discuss matters in an adjudicative session, to the extent allowed under borough and state law.	Neutral	N/A	
10.	5.12.055 B. and C.	Amend code to adopt the same two-day deadline for the borough clerk to provide a copy of the property owner's documents to the assessor as assessor documents must be provided to the property owner.	Neutral	N/A	
11.	5.12.055 E.	Add "electronic transmission" and email for parties in an appeal to transmit documents.	Neutral	N/A	
12.	5.12.060 C. and R.	Amend code to clarify that the Board of Equalization attorney, not the borough clerk, shall prepare decision forms for the board.	Neutral	N/A	
13.	5.12.060 T.	Amend code to clarify that requests for telephonic participation before the Board of Equalization do not have to be physically delivered to borough offices on Binkley Street.	Neutral	N/A	
14.	5.12.260	Increase the threshold for the delinquent balance that must be owed on real property before the borough can foreclose on the property. The current minimum is \$20. The amended code would limit foreclosure actions to property with an accumulated delinquent balance of at least \$200 or more than two years delinquency.	Neutral	N/A	
15.	5.12.245 B.	Amend all references to change Tax Code Area (TCA) to Tax Authority Group (TAG), and Taxing Jurisdiction Area (TJA) to Tax Authority Fund (TAF).	Neutral	N/A	
16.	5.12.070	Amend code to require the finance director to mail tax statements to property owners by July 1, instead of the current limitation in code that the statements must be mailed to the persons listed as owners of record on July 1. Because the statements are often mailed before July 1, the requirement that they go to the owners of record on July 1 presents a problem.	Neutral	N/A	

17.	5.12.180	Add a new provision to code that persons who during the prior year sold or transferred ownership in personal property subject to personal property tax in the borough shall notify the assessor of the sale or disposition of the property and provide a bill of sale or similar statement, including the name and address of the new owner, before Feb. 15. The intent of this provision is to ensure that the borough assessment rolls are complete and up to date.	Negligible	More efficient and effective compliance, with fewer tax liability disputes between former property owners and the borough.	
18.	5.12.190 A.	Add a new provision to code to accommodate the new owners of personal property who did not receive an annual reporting form from the assessor because the assessor was unaware of the transfer of ownership of the property, and thus the new owner missed the payment deadline. The new provision would allow such new owners 30 days from the date of the first notification from the assessor before the 10 percent penalty shall be levied.	Negligible	N/A	

Property tax options no longer under active consideration

1.	5.12.105 L.	Staff considered but decided against recommending any changes to borough code for the hardship exemption for senior citizens, which currently is determined based on the property owner's gross household income. If a property owner is eligible for the hardship exemption, his or her borough property tax liability is limited to 2% of the gross household income.		The borough receives fewer than half a dozen such exemption requests a year, though the number could increase if the borough's optional \$150,000 senior citizen property tax exemption is phased out.	
2.	5.12.105 E.	Staff considered an amendment to direct that the assessor, instead of the assembly, could determine good cause if a senior citizen or disabled veteran misses the application deadline for a property tax exemption. But state statute requires that such cases must go before the assembly.			
3.	5.12.060 E.	After consideration of due process, no changes recommended in the procedure if a property owner does not appear at the board hearing.			
4.	5.12.117 and .210	After consideration, staff decided to retain the criminal penalties in code for filing a false personal property tax return or making a false representation in an application for a property tax exemption. Though the borough does not routinely file such criminal charges, staff determined it is useful to keep the option in code.			