

ORDINANCE NO. 9

AN ORDINANCE ADOPTING A SALES TAX OF 3% ON RETAIL SALES,  
RENTS AND SERVICES, AND PROVIDING FOR THE ADMINIS-  
TRATION, THEREOF

BE IT ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. TAX LEVIED. There is hereby levied a consumer's sales tax of 3% 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.

Section 2. OBLIGATION TO PAY TAX. The obligation of the tax is upon the buyer. The seller shall collect the tax at the time of sale. Collection is enforceable by the seller as the certified tax collector of the Borough; provided, however, that this shall not limit the liability of the buyer to the Borough.

Section 3. CUSTODY, REPORTING AND REMITTANCE. (a) All sales taxes collected are Borough monies, the seller is at all times accountable to the Borough for such monies.

(b) Taxes due the Borough collected by a seller hereunder shall be paid at the expiration of each quarter of each calendar year. Every seller liable for the collection of the tax shall file with the Borough upon forms furnished by it, a return setting forth:

- (1) Gross Sales;
- (2) The non-taxable portion, separately stating the amount of sales revenue attributable to each class of exemption;
- (3) Taxes collected;
- (4) Such other information as may be required by regulation.

The complete return, together with remittance in full for the amount of the tax due, must be transmitted to the Borough on or before the 30th day of the month succeeding the end of each quarter.

(c) If a return is filed with the taxes collected within the 30 days allowed, the seller may retain 3% of the tax collected to cover his costs of administration of the tax.

(d) Any person who filed or should have filed a sales tax return for the prior quarter shall file a return, even though no tax may be due. This return shall show why no tax is due and, if the business is sold, the name of the person to whom it was sold.

Section 4. EXEMPTIONS: The following classes of retail sales, services, and rentals are exempt:

- (a) Casual, isolated sales of property and services or the rental of personal or real property not in the regular course of the business of the seller.

- (b) Hospital services and medical services performed by licensed medical doctors, dentists, osteopaths, optometrists, and chiropractors: and retail sales of medicinal preparations, drugs or appliances under a written prescription for one of the foregoing.
- (c) 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 internal revenue laws of the United States.
- (d) Retail sales of food in college and school cafeterias which are operated primarily for teachers or students and which are not operated for profit.
- (e) Subscriptions to newspapers and periodicals.
- (f) Retail sales, services and rentals to the United States, the State of Alaska, or any instrumentality or political subdivision of either.
- (g) Dues or fees to clubs, labor unions, and fraternal organizations.
- (h) Sales of animal food, seed, plants, and fertilizers to farmers using such commodities to produce goods for sale.
- (i) Retail sales of real property. Services performed by a real estate broker or agent are not exempt under this section.
- (j) Retail sales or rents which the Borough is prohibited from taxing by the constitution or laws of the United States or the State of Alaska.

Section 5. MAXIMUM TAX. The tax shall be applied only to the first \$500.00 of each separate sale, rent, or service transaction. 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 for one month each. 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.

Section 6. DEFINITIONS. When not clearly otherwise indicated by the context, the following words and phrases, as used in this ordinance, have the following meanings:

- (a) "Sale" or "Retail Sale" shall include:
  - (1) Every sale of services;
  - (2) Every rental of real or personal property
  - (3) Every sale of the use or play of a coin-operated machine; and
  - (4) Every sale of tangible personal property, regardless of quantity or price, whether sold by coin-operated machine or otherwise, except:

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

B. Sale of personal property as raw material to a person engaged in manufacturing for sale, when the property becomes an ingredient or component part of the manufactured product or a container thereof or is consumed in the manufacturing process.

(b) "Sale" includes every sale or exchange of services, use or title in property.. Installment, credit and conditional sales are included in the term. The point of delivery is the place of sale.

(c) "Sales Price" means consideration paid by the buyer in terms of money and, in the case of a sale involving an exchange of property, the fair market value of the property exchanged, including delivery or installation costs, taxes or any other expenses whatsoever, measured by the gross sales of the seller.

(d) "Buyer" includes persons who are purchasers of personal property, rental space or services.

(e) "Seller" includes persons who are vendors of property, persons furnishing services, the lessors of rental space or goods, and all persons making sales.

(f) "Coin-operated machine" means a slot machine, marble machine, juke box, merchandising 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.

(g) "Services" includes all services of every manner and description which are performed or furnished for compensation, except services rendered to an employer by an employee, including but not limited to:

- (1) Professional services;
- (2) Services in which a product or sale of property may be involved, including personal property made to order;
- (3) Utilities and utility services, except those provided by a municipality, not constituting a sale of personal property, including sewer, water, 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 business or occupation;
- (6) Services wherein labor and materials are used to accomplish a specified result.
- (7) and any other services including advertising, maintenance, recreation, amusement and craftsmen's services;

(h) "Person" includes individuals and every person recognized in law and every group of persons who act as a unit.

(i) "Chairman" or "Borough" means the Chairman of the Kenai Peninsula Borough or his designee.

Section 7. INSTALLMENT SALES. When a sale is made on an installment basis, the sales tax shall be collected from the down payment, or, if none, from the first installment, or, if the installment or down payment is less than the tax, then from as many installments as is necessary to pay the tax.

Section 8. DEDICATION. The net proceeds from the taxes levied by this ordinance shall be used exclusively for Borough school purposes.

Section 9. RULINGS AND REGULATIONS. (a) The Chairman may take any action necessary or appropriate to the implementation of this ordinance, by promulgating regulations, which may include the adoption of forms. Such regulations or any procedures adopted by the Chairman are effective at the time indicated by him, but are subject to revision or repeal by the Borough Assembly at the next meeting following their effective date or at any time that the Assembly acts thereon.

(b) Should a tax payer under this ordinance or a seller obliged to collect the tax be in doubt as to the application of the ordinance to an actual situation facing him or about to face him, he may apply to the Chairman for an informal ruling on the issue. Rulings having general application may, at the discretion of the Chairman, be promulgated as regulations.

Section 10. REGISTRATION OF SELLERS AS TAX COLLECTORS: CERTIFICATE OF REGISTRATION. (a) All sellers shall file with the Borough an application for a Certificate of Registration, on a form prescribed by the Borough, not more than ten (10) days after the effective date of this ordinance, the date of commencing business, or the opening of an additional place of business.

(b) Upon receipt of a properly executed application, the Chairman will issue, without charge to the seller, a Certificate of Registration, stating the address of the place of business to which it is applicable and authorizing the seller to collect the tax. The certificate must be prominently displayed at the place of business named therein. A seller who has no regular place of business shall attach such Certificate to his stand, truck, or other merchandising device.

(c) The Certificate of Registration is non-assignable and non-transferable and must be surrendered to the Chairman by the seller to whom it was issued upon his ceasing to do business at the location named therein. If the business is continued at the same location, but there is a change in its form of organization, such as from a single proprietorship to a partnership or a corporation, the admission or withdrawal of a partner, or any other change, the seller making such change shall surrender his old Certificate to the Chairman for cancellation. The successor seller is required to file a new application for a Certificate of Registration. Upon receipt of such application, properly executed, a new Certificate will be issued to such successor seller.

(d) When there is a change of location for the seller's place of business, a new Certificate of Registration is required showing the new address.

Section 11. SELLER NOT TO ASSUME TAX. A seller shall not advertise or hold out or state to the public or to any buyer, directly or indirectly, that the tax or any part thereof imposed by this ordinance 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. 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 provided by the Borough indicating the imposition of the tax.

Section 12. TAX SCHEDULE (a) The tax to be added to the sale price, charge or rental shall be in accordance with the following schedule:

<u>Price</u>	<u>Tax</u>
\$ .01 - .13	.00
\$ .14 - .46	.01
\$ .47 - .79	.02
\$ .80 -1.16	.03

For sales above \$1.16, the tax shall be determined by applying 3% to the sale price, charge or rental rounded off to the nearest cent, by eliminating any fraction less than  $\frac{1}{2}$  cent and by increasing any fraction of  $\frac{1}{2}$  cent or over to the next higher cent. Each seller shall be furnished the schedule of tax payable on each taxable amount from dollars \$0.01 to \$100.00. Any one sale of items separately priced shall be taxed upon the aggregate amount.

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

Section 13. PROTEST OF TAX. (a) A seller shall determine in the first instance whether a retail sale is exempt under this ordinance. 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 will furnish to the buyer a form of Certificate of Protest, supplied by the Borough, which shall be filled out by the buyer and delivered to the seller with the disputed tax. 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 Chairman will rule on each protest and send to the buyer a notice that his claim has been allowed or disallowed, within 30 days of receipt of the Certificate by the Borough. 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 Chairman for reconsideration. The decision of the Chairman on reconsideration shall be rendered in writing and shall be final, subject to judicial review where applicable.

Section 14. REGISTRATION OF BUYERS ENTITLED TO EXEMPTION. (a) The Borough may require by regulation that the seller collect the tax on sales from any class of buyer allegedly exempt under Section 4 (c) or 4 (h), unless the buyer is registered under paragraph (b) of this section. An unregistered buyer may file a Certificate of Protest under Section 13.

(b) The Borough may by regulation require that any class of buyer exempt under Section 4 (c) or 4 (h) 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 or Certificates of Exemption which the buyer must show seller to avoid initial payment of the sales tax.

Section 15. CONFIDENTIAL MATERIAL. (a) Returns filed with the Borough for the purpose of complying with the terms of this ordinance and all data obtained from such returns are hereby declared to be confidential and such returns and data obtained therefrom shall be kept from inspection by all private persons except as necessary to investigate and prosecute violations of the ordinance.

(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 of the State or the United States concerned with the enforcement of tax laws.

Section 16. DUTY TO KEEP BOOKS. (a) Every seller engaged in activity subject to this ordinance 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 4 years from the date of the return reporting such sales, and shall preserve for a period of four 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 ordinance.

(b) 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 Chairman may hold investigations and hearings concerning any matters covered by this ordinance and may examine any relevant books, papers, records or memoranda of any seller and may require the attendance of any seller or buyer, or any officer or employee of a seller or buyer at the hearing.

Section 17. OMISSIONS AND CIVIL PENALTIES: (a) Failure to obtain Certificate. A seller who is obliged to obtain a Certificate of Registration but fails to do so within the time prescribed herein is subject to civil penalty of five times

the amount of any tax due. A seller who, after notice, continues to conduct business without obtaining a Certificate, is subject to a penalty of ten times the amount of any tax due.

(b) Failure to file a return. A seller who fails to file a return as required by this ordinance or who fails to remit taxes collected by him, or which should have been collected by him, is subject to a penalty of five percent of the taxes collected, or which should have been collected, per month to a maximum of the higher of 25% or \$300.00. The filing of an incomplete return is the equivalent of filing no return.

(c) Falsification. Falsification or knowing misrepresentation of any record required hereunder subjects the person making such falsification or misrepresentation to a penalty of 100 times any tax due or lost because of such falsification or misrepresentation to a maximum of \$1,000.00.

(d) Failure to separately state the tax. A seller who fails to separately state the tax due in any sales transaction shall be subject to a penalty equal to the amount collected as a tax.

(e) Inspection. The failure of a seller to allow the inspection at reasonable times of records required to be kept by this ordinance subjects the seller to a penalty of three times any deficiency found or estimated to have occurred by the Borough in the tax accounting of the seller.

(f) Estimation. In the event that the Borough is unable to ascertain the tax due to be remitted by a seller by reason of the failure of the seller to keep accurate books, allow inspection, failure to file a return, or falsification of records, the Borough may make an estimate of the tax due based on any information available to it. Notice of the estimate of taxes due shall be furnished the seller and shall become final for the purposes of determining liability of seller to the Borough in thirty days unless the seller earlier files an accurate return, supported by satisfactory records, indicating a lesser liability.

(g) Loss of Records. A seller shall immediately notify the Borough of any fire, theft, or other casualty which would prevent his complying with this ordinance. Such casualty constitutes a defense to any penalty provided in this ordinance, but does not excuse the seller from liability for taxes due. Accidental loss of funds or records is not a defense hereunder.

(h) Maintenance of Suits. Nothing in this section shall prevent the Borough from filing and maintaining an action to collect any taxes collected on which should have been collected in addition to any penalty assessed.

Section 18. EXTENSIONS. For good cause shown, the Borough may grant extensions on any time limitation described in this ordinance. Any application for an extension must be filed before the date specified as the original time limitation.

Section 19. CRIMINAL PENALTIES. (a) Each of the following acts, when intentional, constitutes a misdemeanor and is punishable by imprisonment for up to thirty days and by a fine of up to \$300.00, in addition to any civil penalty assessed:

1. Failure to obtain a Certificate of Registration;
2. Failure to file a return;
3. Falsification or misrepresentation of any record filed with the Borough hereunder or required to be kept hereby, if used to mislead Borough tax authorities.

(b) Each act hereunder constitutes a separate offense and each day constitutes a separate offense for continuing crimes of omission or concealment.

Section 20. EFFECTIVE DATE AND TERM. This ordinance shall be effective 12:01 o'clock A.M., July 1, 1965. One hundred days after the legislature of the State of Alaska authorizes the levy of a compensating use tax by the Borough, this Ordinance shall be repealed and no longer of any effect, if a compensating use tax is not then enacted by the Borough.

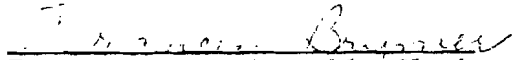
Section 21. PUBLICATION. Publication shall be made, by causing this ordinance to be inserted one time in a newspaper of general circulation in the Borough, by mailing a copy of the ordinance to the City Clerk of each city in the Borough with a request that it be posted on the city hall bulletin board for ten days immediately following receipt, and by mailing a copy of the ordinance to each post office in the Borough, with a request that it be posted on the post office lobby bulletin board for ten days immediately following receipt.

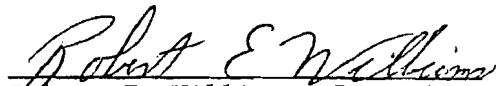
Section 22. SEVERABILITY. If any section, sub-section, paragraph, sentence or clause of this ordinance is declared invalid by a court of competent jurisdiction the remainder of the ordinance shall remain in full force and effect.

Adopted by the Assembly of the Kenai Peninsula Borough

April 20, 1965

ATTEST

  
\_\_\_\_\_  
Frances Brymer, Assembly Clerk

  
\_\_\_\_\_  
Robert E. Williams, President  
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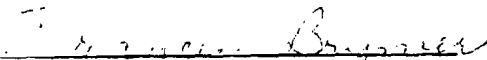
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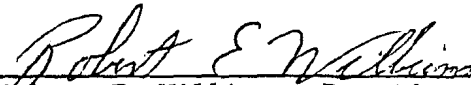
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and then to the Chairman for reconsideration. The decision of the Chairman on reconsideration shall be rendered in writing and shall be final, subject to judicial review where applicable.

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(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 of the State or the United States concerned with the enforcement of tax laws.

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(b) 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 Chairman may hold investigations and hearings concerning any matters covered by this ordinance and may examine any relevant books, papers, records or memoranda of any seller and may require the attendance of any seller or buyer, or any officer or employee of a seller or buyer at the hearing.

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Section 8. DEDICATION. The net proceeds from the taxes levied by this ordinance shall be used exclusively for Borough school purposes.

Section 9. RULINGS AND REGULATIONS. (a) The Chairman may take any action necessary or appropriate to the implementation of this ordinance, by promulgating regulations, which may include the adoption of forms. Such regulations or any procedures adopted by the Chairman are effective at the time indicated by him, but are subject to revision or repeal by the Borough Assembly at the next meeting following their effective date or at any time that the Assembly acts thereon.

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