

CODE ORDINANCE

By: Borough Manager
Introduced: 07/17/07
Public Hearing: 08/07/07
Defeated: 08/07/07

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 07-112**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB CHAPTER 3.35, A UNIFORM SALES TAX.

BE IT ENACTED:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become part of the borough code.

Section 2. Adoption of Chapter. MSB 3.35, a Uniform Sales Tax, is hereby adopted to read as follows:

CHAPTER 3.35: UNIFORM SALES TAX

Section

- 3.35.010 Statutory authority
- 3.35.020 Tax levied; rate
- 3.35.030 Examples of taxed transaction
- 3.35.040 Tax rate
- 3.35.050 Exemptions
- 3.35.060 Special collection for building construction
- 3.35.070 Bond requirements
- 3.35.080 Seller accountability
- 3.35.090 Tax returns; penalty and interest for delinquency
- 3.35.100 Confidentiality of tax records
- 3.35.110 Tax records; final tax return

- 3.35.120 Sale of business; final tax return liability of third parties
- 3.35.130 Procedures and forms
- 3.35.140 Revocation of exemption
- 3.35.150 Business license; required
- 3.35.160 Public statement of tax required; exception for coin-operated machines
- 3.35.170 Liability for payment; certificate of protest
- 3.35.180 Estimated tax
- 3.35.190 Delinquent taxes; notice
- 3.35.200 Lien for tax, interest and penalty
- 3.35.210 Delinquent taxes; foreclosure; time limit
- 3.35.220 Violations; remedies
- 3.35.230 Appeal
- 3.35.240 Non-severability
- 3.35.250 Definitions
- 3.35.260 Automatic expiration
- 3.35.010 STATUTORY AUTHORITY.**

(A) This sales tax is imposed and collected pursuant to the authority granted by Alaska Statutes (AS 29.45.650 et seq.). The purpose of the tax levied by this chapter is to raise revenue for the retirement of voter-approved bond indebtedness. This sales tax ordinance is to be liberally construed to include within the tax all sales, rental, and service activities

described as within the scope of the sales tax pursuant to the terms of this ordinance and only those exemptions and exceptions are to be permitted which expressly and clearly set forth by the terms of this ordinance.

3.35.020 TAX LEVIED; RATE.

(A) A sales tax of 3 percent of the price or charge is levied on all sales, rentals and services made within the borough. The buyer shall pay the tax to the seller for the use and benefit of the Borough; provided, however, that the seller need not collect sales tax but the seller must in any event pay the tax to the borough whether collected or not and shall prominently display a sign indicating the imposition of tax.

(B) For purposes of the tax levied by this section, a sale of tangible or designated intangible personal property is made within the Borough if:

(1) the sale is made by a business located within the borough and delivery occurs within the borough; or

(2) the sale is made by a business located outside of the borough provided that:

(a) delivery occurs within the borough;
and

(b) the seller maintains repeated or regular personal presence within the borough boundaries

for the purposes of promoting and encouraging the sale of seller's goods. Activity limited to the delivery of goods by use of common carrier or the mail is not considered maintenance of a regular presence within the Matanuska-Susitna Borough as referenced herein. Conducting regular promotional events or repeated solicitation of sales by personal presence would be activities that would make sales by such a seller within the scope of liability for the payment of the sales tax.

(C) The tax levied by this section is applicable to all services rendered within the borough, except those services that are unusual, occasional (as opposed to regular or consistent), and merely incidental to the primary service given by the seller to the buyer. Services rendered within the borough that are subject to the tax are those services which are regularly and consistently performed by the seller as part of the seller's ordinary course of business. A service that would not be subject to the tax is where the seller of the service makes a merely incidental appearance within the Borough boundaries related to the purposes of the service being offered, but the primary service to the buyer is performed in a location outside the Borough boundaries.

(D) The sales tax on rentals is applicable to

rentals for all real property located within the borough and to rentals of personal property from a business within the borough and from a business located outside the borough when the personal property is used in the borough.

(E) In addition to the tax levied by the borough, any municipality within the borough may levy a sales tax in accordance with Alaska Statutes, and that tax may be on sources other than those taxed by the borough. Any sales tax levied by a municipality within the borough shall be reported, collected, and enforced in accordance with the terms of this chapter. The borough may enter into an agreement with a municipality within the borough that levies a sales tax for the collection of all sales taxes within the respective municipality's boundaries.

(F) Any proposed increase in the sales tax levy must be first approved by a majority of the voters in an election.

3.35.030 EXAMPLES OF TAXED TRANSACTIONS.

(A) Illustrative examples of transfers of ownership or possessions, and rendering of services, which are taxed under this chapter include the following:

(1) rentals of all tangible personal property, including vending machines, typewriters, office furniture and equipment, tools, automobiles, construction equipment

and aircraft, including all maintenance and repair contracts in connection therewith.

(2) supplying natural or artificial gas, cable television, electricity, ice, telephone, garbage removal, sewer service, steam, water and all services by a public or private utility. Any and all such public utility services and resources shall include the applicable sales tax on the monthly or regular bills submitted by the utility to a consumer who uses the service or consumes the delivered resource within the Borough's boundaries.

(3) transportation for hire of persons by common carrier, including motor transportation, taxicab companies, and all other means of transportation for hire, except as prohibited by AS 29.47.470;

(4) service by telephone, cellular telephone, and electric companies to subscribers or users, including transmission of messages, whether local or long distance. This shall include all services and rental charges having any connection with telephone service, but shall not include deposits;

(5) printing or printed matter of all types, kinds and characters and the service of printing or overprinting;

(6) renting rooms or offices or other commercial space of whatever name or nature by hotels, or

by firms or individuals renting offices or other commercial space, including state or federally subsidized rentals;

(7) foods, confections, and all liquors, beverages, and drinks sold and dispensed by retail stores, restaurants or other dispensers, and sold for immediate consumption upon the premises or delivered or carried away from the premises for consumption elsewhere;

(8) advertising of all kinds, types, and characters contracted for or sold in the Borough, including any and all devices used for advertising purposes and the servicing of advertising devices;

(9) gross proceeds derived from the operation of punchboards, slot machines, marble machines, jukeboxes, merchandise-vending machines, or amusement devices of any kind, and self-service laundry and dry cleaning machines and pull tabs and similar gaming devices;

(10) the sale of tickets or admissions to places of amusement, entertainment, recreational or athletic events, or dues or fees for the privilege of having access to or use of amusement, entertainment, or athletic or recreational facilities, including free or complimentary passes and tickets, admissions, dues or fees. Such free or complimentary passes and tickets,

dues or fees are declared to have a value equivalent to the sale price or value of the tickets, passes, admissions, dues or fees;

(11) sales of tangible personal property and services made for the purpose of developing and improving real estate, even though such real estate is intended for resale as real property;

(12) services of dry cleaners, laundries, garages, barbershops, beauty shops, and cold storage and locker plants;

(13) retail sales of motor fuels, oils, and lubricants; and

(14) services rendered by lawyers, accountants, shoe repair shops, carpenters and cabinetmakers, house painters and decorators, tinsmiths and sheet iron workers, watchmakers, radio and television advertising, photographers (including all film development), printing establishments, garages, mechanics and machinists, plumbers and electricians, welders and stove cleaners, and services of all other trade persons, crafts persons and professional practitioners.

3.35.040 TAX RATE.

(A) Sellers may collect the amount shown on the following schedule if a computerized system, calculator, or cash register is unavailable:

<u>Charge</u>	<u>Tax</u>
Under \$.17	None
\$.17 through \$.50	\$.01
\$.51 through \$.83	.02
\$.84 through \$1.16	.03
\$1.17 through \$1.50	.04
\$1.51 through \$1.83	.05
\$1.84 through \$2.16	.06
\$2.17 through \$2.50	.07
\$2.51 through \$2.83	.08
\$2.84 through \$3.16	.09
\$3.17 through \$3.50	.10
\$3.51 through \$3.83	.11
\$3.84 through \$4.16	.12
\$4.17 through \$4.50	.13
\$4.51 through \$4.83	.14
\$4.84 through \$5.16	.15

Over \$5.16, continue on same scale up to \$500.

3.35.050 EXEMPTIONS.

(A) The following exemptions from the tax levied by this chapter are hereby granted:

(1) A casual or isolated sale not made in the regular course of business is exempt.

(2) Services which do not exceed \$1,500 per calendar year by an individual not licensed by the state

are exempt.

(3) That part of the selling price of a single item that exceeds \$500 is exempt. A single item is an item sold in a single sale consisting of integrated and interdependent component parts affixed or fitted to one another in such a manner as to produce a functional whole, including optional accessories for such items as boats, and automobiles if the accessories are useful or essential for the operation or use of the item.

(4) That part of the periodic selling price of a single service that exceeds \$500 is exempt. The periodic selling price is the amount owed in a calendar month or more frequent basis; services exceeding a payment period of one calendar month are computed for sales tax purposes as though payment were to be made on a calendar month basis. A single service is an interrelated and interdependent function.

(5) Rentals and leases shall be taxed as follows:

(a) That part of the periodic rental price that exceeds \$500 for rental of a single item of real or personal property is exempt with the exception of residential rentals which exceed 30 days as addressed in MSB 3.35.050(A)(30). The periodic rental price is the amount owed on a monthly or more frequent basis; rentals

exceeding a payment period of one month are computed for sales tax purposes as though payment were to be made on a monthly basis.

(b) Sales tax paid on leases under a lease/purchase agreement may be credited toward the payment of the tax due on the exercise of the purchase option in the same proportion as the lease payments are applied to the purchase price; provided, that there will be no refund of taxes paid on the lease.

(6) All purchases of food, edible confections, beverages, and drinks sold or dispensed by retail stores that are purchased with food stamps, food coupons or other certificates issued under 7 USC 2011-2025 (Food Stamp Act) or 42 USC 1786 (Special Supplemental Food Program for Women, Infants or Children) are exempt.

(7) Food coupons, food stamps and other certificates issued under 7 U.S.C 2011-2025 (Food Stamp Act) or food instruments, food vouchers or other type of certificate issued under 42 U.S.C 1786 (Special Supplemental Food Program for Women, Infants and Children) are exempt.

(8) Gross receipts or proceeds derived from the sale of food in lunchrooms, which are for either senior citizens or school students including elementary, secondary or postsecondary students, when the lunchroom

is not operated for profit are exempt.

(9) Sales of food supplies to food service establishments for incorporation into food products to be sold to the public.

(10) Sale of food supplies to hospitals, senior citizen facilities, institutions housing six or more residents, recreational camps, and schools, provided a certificate authorizing such exemption is first obtained from the Borough.

(11) Gross receipts or proceeds derived from carrier sales made directly to consumers of newspaper or any other periodical are exempt.

(12) Sales of tickets for school entertainment, school athletic events, and activities conducted for charitable purposes are exempt. However, this exception is specifically not intended to except those sales of pull tabs, bingo games, or other gaming activities within the scope of designated tangible personal property; as defined and as taxed within the scope of this chapter.

(13) Sales of prescription medicine by licensed pharmacists are exempt, if medicine is prescribed by a licensed medical doctor.

(14) Sales of goods and services performed in the course of necessary mental and physical treatment by

health care providers licensed by the state, including mid-wives, and sales of goods and services performed pursuant to a prescription issued by any of the above licensed health care providers are exempt.

(15) Sales of drugs and medicines for use in hospitals and clinics are exempt.

(16) The sales/rentals of hearing aids, stretchers, wheelchairs, and personal medical apparatus specifically manufactured for a patient are exempt.

(17) Gross receipts or proceeds derived from sales to the United States Government or the state of Alaska or any political subdivision thereof are exempt; provided, however, that the exemption shall not apply to the sale of materials and supplies to contractors for the manufacture or production of property or rendering services for sale to such governmental units or agencies on a contract bid award, in which event the contractor shall be deemed the buyer and subject to the payment of the tax.

(18) Gross receipts or proceeds derived from sales or services which the borough is prohibited from taxing under the laws of the state of Alaska or under the laws of the United States; or gross receipts of proceeds from the transportation, loading, unloading or storing of cargo from vessels or aircraft in foreign or interstate

commerce, or on goods in transit or awaiting and being processed for shipment are exempt.

(19) Direct user fees for municipal services except as specifically prescribed in MSB 3.35.030(A)(2), are exempt.

(20) The air transportation of individuals or goods by a federally certificated air carrier other than a tax or fee authorized under 49 USC App 1513(b) and (e) are exempt.

(21) Sales, rents, or services as provided in AS 29.45.650(h) (space vehicles, orbital facilities) are exempt.

(22) Sales to a dealer in the property sold, for purpose of resale are exempt.

(23) Gross receipts or proceeds derived from funeral charges and services are exempt.

(24) Tickets and service activities related to air, train, boat, cruise line, car rental, bus tour, and other similar ticketed travel and accommodations where such travel or accommodations occur outside the Matanuska-Susitna Borough boundaries are exempt. Conversely, tickets and ticket agency services activities related to travel, accommodations or entertainment events within the Matanuska-Susitna Borough boundaries are subject to sales tax.

(25) Sales of insurance and bonds of guaranty, fidelity, and surety.

(26) Gross receipts or proceeds derived from the transportation of students to and from grade or high schools in motor or other vehicles.

(27) Dues or fees to clubs, labor unions, or fraternal organizations.

(28) Real estate agent's gross receipts received on behalf of the owner and derived from sale of real property, but excepting the real estate agent's fee earned as commission for sale of such property which fee or commission shall be taxable up to the first \$500 of commission.

(29) Fees charged by banks, savings and loan associations, credit unions, and investment banks as follows:

(a) Fees associated with deposit accounts, including services fees, monthly account fees, non-sufficient funds fees, and attachment fees.

(b) Fees for the purchase of bank checks, money orders, travelers checks, foreign currency, and similar products for payments.

(c) Fees for or commissions on the sale, exchange, or transfer of currency.

(d) Fees for the use of automatic teller

machines and for transactions made through automatic teller machines, notary fees, and overdraft protection fees.

(30) Gross receipts or proceeds derived from residential rentals which have a term of 30 or more consecutive days.

(31) Services provided for child day care, pre-elementary school, and babysitting services.

(32) Services provided for Senior Day Care.

(33) Gross receipts or proceeds received by those schools that comply with AS 14.45.100 through 14.45.130, to include religious schools and other private schools, that are derived from the provision of educational services to children at least five years of age.

(34) Purchases of utility services (other than cable television), including the installation and connection charges and fees, by an organization holding a current, valid 501(c)(3) exemption letter from the Internal Revenue Service.

(35) Sales, services and rentals to a buyer that has a current, valid 501(c)(3) exemption ruling from the Internal Revenue Service; provided that the sale, rental or service is not for use in an "unrelated trade or business" of the person as that term is defined in the

Internal Revenue Code.

(36) Sales of raw material to a manufacturer, which raw material becomes an ingredient or component part of a manufactured product or a container thereof, or is consumed in the manufacturing process.

(37) Sales of medicines by a licensed veterinarian and services provided by a licensed veterinarian.

(B) The taxpayer bears the burden of showing eligibility for any exemption. An exemption shall be allowed only when the rental, sale, or service clearly falls within an exemption as defined in this chapter.

3.35.060 SPECIAL COLLECTION FOR BUILDING CONSTRUCTION.

(A) The buyer who proposes to undertake construction of a private building or buildings in the amount in excess of \$500 within the borough may pre-pay the required tax. The issuance of the non-transferable tax payment receipt shall exempt the buyer, for a period not to exceed one year, from paying any further tax on materials for the project. The showing of the building exemption certificate at the time of the purchase of goods, rentals of equipment, materials, or articles will relieve the seller from the obligation to collect the tax. However, the seller shall determine that the sale or rental is to be used on the project for which the

certificate has been issued.

3.35.070 BOND REQUIREMENTS.

(A) The borough may require a seller to post a bond, furnish a statement of net worth, or furnish additional security to ensure the full and prompt payment of taxes to be collected under this chapter, when in judgment of the manager, it is in the best interests of the borough to do so. The manager shall consider such facts as past payment practices, prior bankruptcies, relative project size to net worth, length of time operating in the Borough, among other similar circumstances.

3.35.080 SELLER ACCOUNTABILITY.

(A) Upon collection by the seller of the taxes imposed in this chapter, ownership of the collected taxes shall vest in the borough. All taxes collected are borough monies, and the seller holds the money in trust for the borough and is at all times accountable to the borough for such monies. Collection of any tax or taxes, interest, administrative costs and penalties due and payable to the borough under this chapter may be enforced through civil action brought in any court of competent jurisdiction. Every sale which is made within the borough, unless explicitly exempted by this chapter or a subsequent ordinance, shall be presumed to be subject to

the tax imposed under this chapter in any action to enforce the provisions of this chapter.

3.35.090 TAX RETURNS; PENALTY AND INTEREST FOR DELINQUENCY.

(A) Every person making sales, rentals, or performing services within the Borough shall on or before the 15 day of the month complete a return on a form approved by the borough for the preceding month setting forth the total of all sales, rentals, and services, regardless of whether such transactions are taxable or nontaxable, the total of all sales subject to tax, the tax computed on gross taxable sales, services, and rentals, and such other information as the borough may require, and sign and deliver or mail the same to the borough finance department on or before said 15th day.

(B) A seller other than a governmental agency making only exempt sales may request to file for the preceding calendar year or such other fiscal year as the manager or designee may authorize. Such returns must contain the information required in monthly returns and must be delivered or mailed by the last day of the month following the last day of the year for which the request is made.

(C) The tax levied under this chapter, whether or not collected from the buyer, except for credit

transactions covered in subsection (D) of this section, must be remitted by the seller to the borough at the time of transmitting the return, and if not so remitted or if the return is not timely filed, such tax is deemed delinquent. A late filing penalty of \$25 shall be added to all late returns. The United States Postal Service postmark shall determine the date of filing mailed returns. In addition, a late payment penalty of 5 percent per month or any fraction thereof, until a total late penalty of 25 percent has accrued, shall be added to all returns until the tax, penalty and interest have been paid. The penalty shall be assessed and collected in the same manner as the tax is assessed and collected. In addition to these penalties, interest at the rate of 15 percent per year on the delinquent tax from the date of delinquency until paid shall accrue and be collected in the same manner the delinquent tax is collected.

(D) The seller shall report and remit sales tax to the borough on the same basis, cash or accrual, the seller uses for reporting federal income tax. A seller reporting on the accrual basis shall be allowed a tax credit for sales tax previously paid by the seller on any sale, service or rental made on credit to the extent the seller declares such debt to be uncollectable and a bad debt for federal income tax purposes. Such bad debt

credit must be claimed on a timely filed monthly sales tax report within two years from the date of sale in which the bad debt arose.

3.35.100 CONFIDENTIALITY OF TAX RECORDS.

(A) Except as otherwise provided in this chapter and as necessary for collection, all returns, reports, and information required to be filed with the borough under this chapter shall be kept confidential and shall be inspected only by officers authorized to administer this tax law or in response to a valid subpoena.

(B) The following information shall be made available to the public:

(1) the name and address of taxpayer business license holders;

(2) whether a taxpayer is more than 30 days delinquent in filing returns and in remitting sales tax;

(3) if delinquent, the amount or estimated amount of sales tax due and the number of returns not filed; and

(4) the manager or his designee may, from time to time, publish the names and amount of delinquent tax of seller's delinquent in remitting sales taxes. Information may also be made available to the public in the form of statistical reports if the identity of particular sellers is not revealed by the reports.

(D) MSB 1.50 does not apply to this chapter.

3.35.110 TAX RECORDS; FINAL TAX RETURN.

(A) It shall be the duty of every seller required to make a return and remit any tax collected or due under this chapter to keep and preserve suitable records of the gross daily sales, together with invoices of purchases and sales, bills of lading, bills of sale, and other pertinent records and documents which may be necessary to determine the amount of tax due under this chapter and such other records of goods, wares, merchandise, and other subjects of taxation under this chapter as will substantiate and prove the accuracy of such records. It shall also be the duty of every seller who makes exempt sales to keep records of such sales. The seller's records shall be subject to examination and audit by the borough to ensure compliance with this chapter. The seller shall preserve the records for a period of three years after payment of the taxes, unless authorized for earlier disposal by the borough. The burden of proving that a sale, rental or service was not taxable shall be solely upon the seller.

(B) A seller required to file a sales tax return for the previous month shall file a return for the current month even though no tax is due. The return shall state the reason(s) the tax was not collected or

due for the month.

3.35.120 SALE OF BUSINESS; FINAL TAX RETURN; LIABILITY OF THIRD PARTIES.

(A) If any seller sells, assigns, transfers, conveys, leases, forfeits, abandons, or otherwise disposes of the business or accounts receivable, then the purchaser, successor, transferee, lessee, assignee, creditor or secured party shall withhold a sufficient portion of the purchase money or loan to pay the amount of such sales taxes, penalties, administrative costs and interest as may be due and unpaid to the borough and to pay such to the borough. If the purchaser, assignee, transferee, lessee, successor, creditor or secured party fails to withhold from the purchase money or loan, or fails to otherwise provide for or make the payment of the taxes, interest, administrative costs and penalties owed by the business as provided in this chapter, then purchaser, assignee, transferee, lessee, successor, creditor or secured party shall be personally liable, jointly and severally with the seller, for the payment of the taxes, penalties, administrative costs and interest accruing and unpaid to the borough on account of the operation of the business of any former owner, owners, operators, or assignees. This section is in addition to

any rights of the borough arising under AS 45.06.101, et seq.

(B) Upon termination, dissolution or abandonment of a corporate business, any officer having control or supervision of sales tax funds collected or who is charged with the responsibility for the filing of returns or the payment of sales tax funds collected, shall be personally liable for any unpaid taxes, interest, administrative costs, and penalties on those taxes, if such officer willfully fails to pay or cause to be paid any taxes due from the corporation. The officer shall be liable only for taxes collected which became due during the period in which the officer had the control, supervision, responsibility, or duty to act for the corporation. In addition, regardless of willfulness, each director of corporation shall be jointly and severally liable for said amounts. This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

3.35.130 PROCEDURES AND FORMS.

(A) The finance director shall adopt and amend procedures and forms for the administration of this chapter, and shall adopt guidelines for the determination of the taxability of transactions and may decide on

specific transactions upon request. The written decision on a specific sale may be relied upon by the parties to that sale unless essential facts were not accurately provided to the finance director prior to the decision or the decision is clearly contrary to the provisions of this code.

(B) The burden of proving an exemption shall be solely on the person claiming an exemption. Persons claiming an exemption may be required to obtain an exemption certificate. Certificates issued under this chapter shall expire within one year or as otherwise determined by the finance director.

(C) The finance director shall do all things necessary to administer this chapter, which includes the authority to compromise and abate penalties, and to negotiate and enter into payment plans for delinquent sales taxes, penalties, and interest.

3.35.140 REVOCATION OF EXEMPTION.

(A) Upon a determination by the finance director that an exemption holder has misused or permitted another to misuse a sales tax exemption authorization or certificate issued to the holder, the finance director may revoke the sales tax exemption authorization or certificate. Prior to revocation, the finance director shall hold a hearing at which the person with the

exemption may be present and at which the evidence of misuse shall be presented. The certificate holder shall be given an opportunity to refute any evidence presented.

(B) The revocation shall be permanent unless the finance director ordering the revocation provides for a shorter period in the written revocation order.

(C) If the revocation is ordered, the order and period of revocation may be appealed to the manager if the appeal is filed in writing with the manager within ten days of the receipt of the written order. The decision of the manager is final and may be appealed only to the appropriate judicial authority.

(D) A person is guilty of a misdemeanor if he obtains or attempts to obtain an exemption from the sales tax for a sale, rental, or service when the person is not entitled to the exemption, and is subject to the penalties provided in MSB 1.40.010 and MSB 3.35.220.

3.35.150 BUSINESS LICENSE; REQUIRED.

(A) All sellers shall annually submit to the borough copies of valid business licenses required by AS 43.70.020, MSB 3.36.010 and any business license required by a municipality within the borough. Each seller who submits copies of licenses in accordance with this chapter consents to the inspection of any state or municipal business license tax returns in order to

facilitate the objectives of this chapter.

3.35.160 PUBLIC STATEMENT OF TAX REQUIRED; EXCEPTION FOR COIN-OPERATED MACHINES.

(A) A seller shall not advertise or hold out or state to the public or to any buyer, directly or indirectly, that the tax payment or any part thereof imposed by this chapter 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 absorbed in whole or in part. The seller shall either separately state the tax to the buyer or reference payment of tax on any document of sale, and shall prominently display a sign indicating the imposition of the tax. 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.

3.35.170 LIABILITY FOR PAYMENT; CERTIFICATE OF PROTEST.

(A) A seller shall determine in the first instance whether a sale is exempt under this chapter; however, if the seller incorrectly determines that a sale is exempt, then the seller is liable to the Borough for the tax for that sale. In the event the seller determines a transaction is not exempt, but the buyer believes the transaction to be exempt, then the seller will furnish to the buyer a certificate of protest in a form approved 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 necessary to determine the exemption. 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 calendar days after delivery of the certificate, together with any additional information that the seller believes to be pertinent to the determination of the exemption. The finance director shall decide each protest and send to the buyer a notice that his claim has been allowed or disallowed within 30 calendar days of receipt of the certificate by the borough. If the claim has been allowed, a refund will be remitted with the notice. In the event the claim is disallowed, the buyer may seek judicial review thereof as provided in the Alaska Appellate Court Rules.

3.35.180 ESTIMATED TAX.

(A) 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, to 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 to the seller, and the amount therein stated shall become final within 30 calendar days, unless the seller earlier files an accurate return, supported by satisfactory records, indicating a lesser liability or unless the Borough proves a greater liability within six years from the date the final estimate is established. A seller shall immediately notify the Borough of any fire, theft, or other casualty which would prevent his complying with this chapter. Such casualty constitutes a defense to any penalty provided in this chapter, but does not excuse the seller from liability of taxes due. Accidental loss of funds or records is not a defense under this section.

(B) Nothing in this section shall prevent the borough from filing and maintaining an action to collect any taxes collected by the seller or which should have been collected in addition to any penalty assessed. In such action, the estimated tax due as shown by the borough shall be prima facie evidence of the amount payable.

3.35.190 DELINQUENT TAXES; NOTICE.

(A) Whenever the finance director reasonably believes a return contains inaccurate reporting or

whenever any seller has become delinquent in the submission of the required monthly return or in remitting sales taxes, the finance director shall mail to the delinquent seller's last known address a written demand by certified mail, return receipt requested, for submission of the corrected or required sales tax return and remittance within ten days. In the event of non-compliance with such demand, the finance director may make a sales tax assessment against the delinquent seller, the assessment to be based on an estimate of the gross taxable revenue received by the seller during the monthly period in question. A copy of the assessment shall be sent to the seller at his last known address by certified mail, return receipt requested. The seller shall have a right to a hearing before the finance director at which time the seller shall make available for examination the books, papers, records, and other documents pertaining to the sales and revenue for the period involved in the assessment. The seller may exercise his right to a hearing by delivering to the finance director within fifteen days of the date the notice was mailed a written request for a hearing. The finance director shall establish a date and time for a hearing to be held within ten days of receipt of the request unless a later time is mutually agreeable. The

manager shall conduct the hearing and shall issue an amended assessment if he determines an amendment should be made. The amended assessment, or the original assessment if no amendment is made, shall be the final assessment for the purposes of determining the seller's liability to the borough. If no timely request for a hearing is made, the original assessment shall be the final assessment 30 days after the mailing of the notice of the original assessment unless the seller has submitted an accurate return within the 30 days.

(B) A determination of the finance director may be appealed to the manager pursuant to MSB 3.35.230.

(C) The borough may file a civil action for collection of any taxes, penalty or interest due before or after making a demand or assessment under subsection (A) of this section.

(D) Whenever any seller fails to submit the required monthly return or remit taxes after notice has been given as provided in subsection (A) of this section, the finance director may require such seller to submit returns and remit taxes on a more frequent basis.

3.35.200 LIEN FOR TAX, INTEREST AND PENALTY.

(A) The tax, interest, penalties and administrative costs imposed under this chapter shall constitute a lien in favor of the borough upon the assets, including all

real and personal property, of every person making taxable sales within the borough. The lien arises upon delinquency and continues until the liability for the amount is satisfied or the property of the delinquent person is sold at foreclosure. When recorded, the sales tax lien has priority over all other liens except:

(1) liens for property taxes and special assessments;

(2) liens that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien; and

(3) mechanic's and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the sales tax lien.

(B) The borough may file a notice of lien in the manner provided for federal tax liens under AS 40.19, provided that, in addition to the rights afforded thereunder, the borough's sales tax lien shall attach to all seller's personal property, whether tangible or intangible, located in the recording district in which the lien is filed regardless of where the seller resides.

The borough may record subsequent notices of lien for amounts due after the recording of a previous notice of lien. The Borough may also record amended notices of

lien to correct any errors or to provide notice of the then current principal amount owing.

(C) The notice of lien for real property shall set out:

(1) the name of the seller;

(2) the principal amount owing at a stated date; and

(3) a statement that penalty, interest and administration costs are also owing.

(D) Within ten days after filing the notice of lien or amended notice of lien, the borough shall mail a copy of the notice by certified mail, return receipt requested, to the last known address of seller provided, however, failure to mail shall not void the lien nor lessen its priority.

3.35.210 DELINQUENT TAXES; FORECLOSURE; TIME LIMIT.

(A) The borough may file an action to foreclose the lien of the borough for the tax upon property and rights to property, real or personal, and sell the same, applying the proceeds thereof to the payment of the tax, interest, penalty, administrative costs and the costs of foreclosure. The action shall be commenced and pursued in the manner provided for the foreclosure of liens by AS 09.45.170 through 09.45.220; provided, however, upon commencement, the borough shall provide written notice of

the action to all persons having an interest of record in the property being foreclosed or persons in possession of the property. The action may be commenced at any time within six years after the lien arises.

3.35.220 VIOLATIONS; REMEMDIES.

(A) If a seller who owes sales taxes to the borough fails to pay them timely, whether intentionally or not, the seller shall pay the borough all costs of collection, to include without limitation, actual reasonable attorney's fees, costs and audit fees incurred for collection, whether or not court action is commenced. This amount of fees and costs is in addition to the civil penalty set out in subsection (C) of this section.

(B) Each of the following acts or omissions, when intentional, constitutes an ordinance violation and subjects the violator to a civil penalty. Such an act or omission is intentional when it continues after notice from the borough to the seller or seller's agent that such act or omission is an ordinance violation. Each act or omission set forth in this section constitutes a separate violation, and each day that a violation of this chapter continues constitutes a separate violation.

(1) failure to obtain a current business license by a seller;

(2) making sales either without a current,

valid business license or while the seller's business license is suspended;

(3) failure to file a tax return or failure to remit taxes when due;

(4) falsification or misrepresentation of any record or fact provided to the borough under this chapter or required to be kept by this chapter, if used to mislead the Borough tax authorities;

(5) failure to correct a falsification or misrepresentation of any record or fact provided to the borough concerning sales tax;

(6) failure of a seller to allow the inspection at reasonable times of records required to be kept by this chapter; and

(7) failure of a seller to keep and preserve records required to be kept under this chapter.

(C) For continuing violations, the civil penalty for each violation of this chapter shall be \$25 per day for each violation continuing in the first ten days and of \$100 per day for each violation continuing thereafter; provided however, the sum of these civil penalties shall not exceed \$5,250 (60-day limit) per violation.

(D) The borough may request the court to enjoin a seller from violating any provision of this chapter.

(E) All remedies hereunder are cumulative and are

in addition to those existing at law or equity.

3.35.230 APPEAL.

(A) A taxpayer may appeal a decision of the finance director to the manager in accordance with the provisions of this section.

(B) The taxpayer has the right to a hearing before the manager.

(C) The taxpayer's request for a hearing must be in writing, signed by the taxpayer (or counsel therefor) and delivered to the manager within 30 days of the written notice of the finance director's decision. Taxpayer's failure to request a hearing within the time and manner provided shall be deemed a waiver of the taxpayer's appeal rights and to any appellate review to which the taxpayer might have otherwise been entitled; and, the finance director's decision becomes final.

(D) If the taxpayer duly delivers a request for hearing, the manager shall hold a hearing within 15 days from the date of receipt of the request. The manager may extend in writing the hearing date, but no extension of more than 30 days shall be granted. The manager shall duly notify the taxpayer of the date, time, and place of the hearing in writing.

(E) The taxpayer may be represented by counsel at the taxpayer's own expense.

(F) The hearing shall be open to the public.

(G) All testimony shall be under oath. The proceedings shall be recorded. Upon written request, the taxpayer is entitled to a copy of the audio recording at no charge. The taxpayer or representative may examine and cross-examine witnesses. The manager or representative may also question witnesses. Exhibits may be introduced. The rules of evidence need not be strictly followed. Irrelevant or unduly repetitious evidence may be excluded. The factual record is closed at the close of the hearing. The manager may continue the hearing for good cause.

(H) The order of presentation will be:

(1) brief opening statement by the finance director;

(2) brief opening statement by the taxpayer, which is optional;

(3) presentation of evidence by finance director;

(4) presentation of evidence by taxpayer;

(5) rebuttal as necessary;

(6) argument by finance director;

(7) argument by taxpayer; and

(8) rebuttal argument by finance director.

(I) The taxpayer must prove by a preponderance of

the evidence the factual basis upon which they are relying.

(J) Within ten days from the conclusion of the hearing, the manager shall render a written decision with specific findings which shall be effective immediately or according to its terms.

(K) A taxpayer who is dissatisfied with the borough manager's decision may appeal it to the superior court in accordance with the Alaska Appellate Rules of Procedure. The taxpayer's failure to appeal in accordance with the Alaska Appellate Rules of Procedure constitutes a waiver of appeal rights and the manager's decision becomes final.

3.35.240 AUTHORITY.

(A) This tax is enacted in accordance with Ordinance Serial No. 07-113, approved by the voters on October 2, 2007 and can only remain in effect if:

(1) the areawide real property tax levy does not exceed 7.8 mills; and

(2) a residential real property tax exemption in the amount of at least \$10,000 of assessed value for a primary residence is in effect.

3.35.250 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly

indicates or requires a different meaning:

- "Buyer, consumer, and person" include, without limiting the scope thereof, every individual, receiver, assignee, trustee in bankruptcy, trust estate, firm co-partnership, joint venture, club, company, business trust, corporation, association, society, or any group of individuals acting as a unity, whether mutual, cooperative, fraternal, non-profit or otherwise, and the plural as well as the singular number.
- "Designated intangible personal property" includes gaming sales, services, or activities authorized by AS 5.15.010-.995 and tickets.
- "Include" means include but not limited to.
- "Rents" include every letting or renting of real or personal property for consideration.
- "Sale" includes any sale of real property or tangible or designated intangible personal property. The term "sale" includes sales, barter, credit, installment and conditional sales to a buyer or consumer within the Borough if the seller maintains any office, distribution, or sales house, warehouse or any

other place of business, or solicits business or receives orders through any agent, salesman, or other type of representative, within the Borough.

- "Sale for resale" means the sale of tangible or designated intangible personal property to a buyer whose principal business is the resale of the property, whether in the same or an altered form, and who holds a valid resale certificate issued by the Matanuska-Susitna Borough.
- "Seller" includes every person making sales to a buyer or consumer, renting real or commercial property or performing services for consideration.
- "Selling price" and "price" include the consideration, whether money, credit, rights or other property, expressed in terms of money, paid, given or delivered by a buyer to a seller, all without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expenses whatsoever paid or accrued, and

without any deduction on account of losses.

- "Services" include all services of every manner and description that are performed or furnished for consideration, whether in conjunction with the sale of goods or not, but does not include services rendered by an employee to his or her employer.

3.35.260 AUTOMATIC EXPIRATION

(A) This ordinance shall automatically expire on June 30, 2011.

Section 3. Effective date. Ordinance Serial No. 07-112 becomes effective March 1, 2008, if the ballot proposition contained in Ordinance Serial No. 07-113 is approved by a majority of the qualified voters voting on the proposition at the regular Borough election on October 2, 2007.

DEFATED by the Matanuska-Susitna Borough Assembly this 7 day of August, 2007.

YES: Woods, Allen, Wells

NO: Church, Kvalheim, Kluberton

(Tie vote)