

CODE ORDINANCE

By: Assemblymember Allen  
Introduced: 07/17/07  
Public Hearing: 08/07/07  
Postponed until 11/20/07: 08/07/07  
Postponed Indefinitely: 11/20/07

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 07-114**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ESTABLISHING A TAX ON A NATURAL RESOURCE WHENEVER THE NATURAL RESOURCE IS SEVERED FROM PROPERTY WITHIN THE MATANUSKA-SUSITNA BOROUGH AND PROVIDING FOR PENALTIES FOR FAILURE TO PAY TAXES DUE BY ADOPTING MSB 3.55, NATURAL RESOURCE SEVERANCE TAX.

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BE IT ENACTED:

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

Section 2. Adoption of chapter. MSB 3.55 is hereby adopted to read as follows:

**CHAPTER 3.55: NATURAL RESOURCE SEVERANCE TAX**

Section

- 3.55.010 Established
- 3.55.020 Payment of tax
- 3.55.030 Filing of statements
- 3.55.040 Statement of verification
- 3.55.050 Confidentiality
- 3.55.060 Civil penalties
- 3.55.080 Failure to file
- 3.55.085 Lien for tax, interest and penalty
- 3.55.090 Delinquent taxes
- 3.55.095 Appeal
- 3.55.100 Collection and use of revenue

3.55.110 Definitions

**3.55.010 ESTABLISHED.**

(A) There is hereby levied a tax upon the severer of a natural resource which has been severed and removed from property within the Matanuska-Susitna Borough.

(B) The unit of measurement for mineral resources shall be by cubic yard or short ton (2000 pounds) weight, as applicable.

(C) The unit of measurement for severed timber resources shall be by the acre.

(D) The rate of tax for natural resources severed and removed from lands within the Matanuska-Susitna Borough shall be the following:

Material	\$0.25/yd
Coal	\$0.25/short ton
Timber	\$2.50/acre

(E) The tax for timber removal shall only apply to timber severed from a single locality greater than 40 acres or to timber removed from two or more localities with a combined acreage greater than 60 acres per calendar year.

(F) The tax shall not apply to severance accomplished to fulfill contracts executed prior to October 1, 2007, in which the bid closing date occurred prior to August 8, 2007, and the severance occurs after

July 1, 2008, but no later than December 31, 2008.

**3.55.020 PAYMENT OF TAX.**

(A) The severance tax on a natural resource shall be paid quarterly. The tax is due on the 20 day of March, June, September, and December on natural resources severed or removed from the property during the preceding quarter. If the tax is not paid before the end of the month which it becomes due, the tax becomes delinquent. The severance tax on resources shall be paid by or on behalf of the severer initially severing the resource.

**3.55.030 FILING OF STATEMENTS.**

(A) The tax shall be paid to the finance department and the person paying the tax shall file with the finance department at the time the tax is paid a statement, under oath, on forms prescribed by the finance department, at a minimum, the following information:

(1) a description of the property from which the natural resources were severed by name, legal description, or by account numbers assigned by the borough;

(2) the names, addresses, and contact numbers of the severers paying the tax;

(3) the severer business license number, if applicable;

(4) the gross weight or cubic yards of

minerals extracted from the property or the total acreage of timber harvested;

(5) the name of first purchaser and the amount of natural resources purchased in tons, cubic yards or harvested acres of timber, if any; and

(6) the type of resource severed.

(B) Reports by or on behalf of the severer are delinquent the first day following the day the tax is due. Each severer is subject to a penalty of \$25 per day for each business day in which the report is not filed. The penalty for failure to file a report is in addition to the penalty for delinquent taxes.

#### **3.55.040 STATEMENT VERIFICATION.**

(A) The finance director may:

(1) require a person engaged in resource extraction, production, or transportation, any agent or employee of the person, and the purchaser of resources taxed under this chapter to furnish additional information that is considered necessary by the finance director to compute the amount of the tax or to determine if a tax is due;

(2) examine the pertinent books, records, and files of such a person;

(3) conduct hearings and compel the attendance of witnesses and the production of pertinent books,

records, and papers of any person; and

(4) make an investigation or hold an inquiry that is considered necessary by the manager for a disclosure of facts as to:

(a) the amount of extraction or production of a natural resource of an extractor, producer, or seller;

(b) the purchaser of the resource; and

(c) transporter of the resource from the removal site within the boundaries of the borough, if other than the purchaser.

### **3.55.050 CONFIDENTIALITY.**

(A) Information and materials in the possession of the borough which disclose the particulars of the business affairs of the payer of taxes under this chapter shall be kept confidential by the borough, except in an official investigation by the borough or other governmental agency enforcing the laws of the Borough, the state, or the United States Government. However, the borough may publish statistics presented in a manner that prevents identification of particular business reports and items and may publish tax lists from time to time identifying the names of taxpayers who are delinquent, as well as relevant information that may assist in the collection of taxes.

### **3.55.060 CIVIL PENALTIES.**

(A) A penalty of 5 percent of the tax due shall be added to all delinquent taxes on the day they become delinquent and every 30 calendar days thereafter. However, the total penalty shall not exceed 20 percent of the tax due. Interest of 2 percent above the prime rate as of the first date taxes become due shall accrue upon all unpaid taxes, excluding any penalty, from the due date until taxes are paid in full. However, the total interest shall not exceed 15 percent per year.

(B) For knowingly failing to file a tax statement required under this chapter or knowingly making a false affidavit to a statement required under this chapter relative to the amount, location, kind, or value of property subject to taxation with intent to evade taxation, a penalty not to exceed a fine of \$1,000 may be imposed.

(C) In addition to the remedies specified above, the borough may use any and all remedies provided by law, including civil action, to collect the severance tax.

### **3.55.080 FAILURE TO FILE.**

(A) Whenever the finance director reasonably believes a report contains inaccurate reporting or whenever severer has become delinquent in the submission of the required reports or in remitting severance taxes,

the finance director shall mail to the delinquent severer's last known address a written demand by certified mail, return receipt requested, for submission of the corrected or required severance tax report and remittance within ten days. In the event of non-compliance with such demand, the finance director may make a severance tax assessment against the delinquent severer, the assessment to be based on an estimate of the gross materials severed by the severer during the period in question. A copy of the assessment shall be sent to the severer at its last known address by certified mail, return receipt requested. The severer shall have a right to a hearing before the finance director at which time the severer shall make available for examination the books, papers, records, and other documents pertaining to the materials severed for the period involved in the assessment. The severer may exercise his right to a hearing by delivering a written request for a hearing to the finance director within 15 days after the date the notice was mailed. The finance director shall establish a date and time for a hearing to be held within 14 days of receipt of the request, unless a later time is mutually agreeable. The person conducting the hearing shall issue an amended assessment, if that person determines an amendment should be made. The amended assessment, or the

original assessment if no amendment is made within five borough business days of the hearing, shall be the final assessment for the purpose of determining the severer's liability to the borough. If no timely request for a hearing is made, the original assessment shall be the final assessment 30 calendar days after the mailing of the notice of the original assessment unless the severer has submitted an accurate return within those 30 calendar days.

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

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

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

### **3.55.085 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 all respective persons



severing materials from property 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 a foreclosure sale. 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 severance tax lien for amounts actually advanced before the recording of the severance 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 severance tax lien shall attach to all severer's personal property, whether tangible or intangible, located in the recording district in which the lien is filed, regardless of where the severer is actually located. 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 then current principal amount owing.

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

(1) the name of the severer;

(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 borough business 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 severer, provided failure to so shall not void the lien nor lessen its priority.

### **3.55.090 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 and 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.

### **3.55.095 APPEAL.**

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

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

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

(D) If the severer 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 borough manager shall duly notify the severer of the date, time, and place of the hearing in writing.

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

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

(G) All testimony shall be under oath. The proceedings shall be audio recorded. Upon written request, the severer is entitled to a copy of the audio recording at no charge. The severer 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 severer, which is optional;

(3) presentation of evidence by finance director;

(4) presentation of evidence by severer;

- (5) rebuttal as necessary;
- (6) argument by finance director;
- (7) argument by severer; and
- (8) rebuttal argument by finance director.

(I) The severer must prove by a preponderance of the evidence the factual basis upon which he or she is relying.

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

(K) A severer who is dissatisfied with the manager's decision may appeal it to the superior court in accordance with the Alaska Appellate Rules of Procedure. The severer'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.

#### **3.55.100 COLLECTION AND USE OF REVENUE**

The top priority of the levy is life, health, and safety matters related to transportation projects. Such revenues collected under this chapter shall be used to pay for transportation-related capital projects and retire transportation bond indebtedness.

#### **3.55.110 DEFINITIONS.**

(A) In this Chapter, unless the context otherwise requires:

- "Assembly" means the Matanuska-Susitna Borough Assembly.
- "Borough" means the Matanuska-Susitna Borough.
- "Coal" includes but is not limited to sub-bituminous, bituminous, anthracite, and lignite classifications.
- "Natural resource" means any raw or unfinished resources including, but not limited to, material, timber, and coal.
- "Property within the Borough" includes all private, borough, state, federal, or native lands.
- "Sever" means to separate and remove from its original or existing site.
- "Material" includes but is not limited to sand, gravel, lime, soil, peat, moss, sphagnum, stone, pumice, cinders, and clay.
- "Severer" means a person, company, corporation, or other entity engaged in severing or harvesting natural resources.
- "Timber" means felling, removing, or producing for sale, profit, or commercial use, timber or

any product of the forest.

Section 3. Effective date. This ordinance shall take effect on July 1, 2008, upon adoption by the Matanuska-Susitna Borough Assembly.

POSTPONED INDEFINITELY by the Matanuska-Susitna Borough Assembly this 20 day of November, 2007.

POSTPONED INDEFINITELY: Woods, Houston, Church, Bettine, and Kluberton.