

Chapter 6.40

SALES TAX

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6.40.010 Definitions. For the purpose of this Chapter, unless the context otherwise requires, the following words and phrases shall have the meanings defined herein:

A. "Buyer" means the individual or entity who, in the ordinary meaning of the term, takes title to, acquires an interest in, takes possession of, or rents real or personal property, or receives or acquires services for a consideration;

B. "Renting of property" means an individual or entity using or occupying, or acquiring the right to use or occupy, the property owned by another for a consideration;

C. "Sale" means the transfer of or contract to transfer rights or an interest in real or personal property or the renting of property, or the rendering, performance or furnishing of services from a seller to a buyer for a consideration. This includes the sale of electricity, gas and other utility service.

D. "Seller" means every individual or entity, whether acting as principal, agent or broker, making sales or renting property to, or performing services for, a buyer.

E. "Selling price" means the consideration, whether money, credit, rights or other property, expressed in the terms of money, paid or delivered by a buyer to a seller. Descriptively, selling price:

1. Shall be without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, delivery costs, taxes or any other expenses

whatsoever paid or accrued and without any deduction on account of losses;

2. Includes any federal or state excise tax on the sale;

3. Does not include the value of used articles intended for resale taken in trade as a credit or part payment on the sale of a new or used article. This amount shall be deductible from the total sales price of the new or used article being sold and the tax paid only on the net sales price.

F. "Services" means all services of every manner and description. Services specifically include the admission price charged for entering or staying in any place of entertainment including theaters, exhibitions, games, races where admission is by tickets, gate charges, seat charges, box charges, season pass charges, or cover charges.

6.40.020 Levy of Tax.

A. A sales tax is levied on all sales and rents made wholly or partially in the Borough at the rate of five percent of the selling price.

B. A sales tax is levied on all services performed in the Borough at the rate of five percent of the selling price. For the purposes of this Chapter, services are performed within the Borough if the service, or any part thereof, is performed, rendered or furnished within the Borough.

C. This tax is meant to be interpreted broadly and applied to all sales, rents and services made or performed wholly or partially in the Borough to the maximum extent constitutionally permissible, subject only to the exemptions set out below in section 6.40.030.

D. A buyer shall be entitled to any appropriate credit against this tax to the extent constitutionally mandated. The Borough is authorized to enter into agreements with other taxing authorities to effectuate tax collection and allocation.

E. 20% of the total tax revenues received hereunder, less administrative and enforcement-related expenses, are dedicated to operation, maintenance and repair of the borough landfill.

6.40.030 Exemptions. The following sales are exempt from taxation:

A. Building materials purchased locally for construction to be performed within the Borough limits are taxable on the first \$3,000 only, with any balance over \$3,000 to be exempt. This exemption is applicable to each buyer on an annual basis, beginning on January 1 and expiring on December 31 of each year.

B. Casual sales. A casual and isolated sale not made in the regular course of business is exempt.

C. Sales, service and rentals to any non-profit corporation, organization or institution which has obtained a certificate of exemption as being organized exclusively for religious or charitable purposes are exempt, except where the sale, rental or service is incidental to business for profit.

D. Court fixed fees. Any sale where the price is fixed by law, by a court of competent jurisdiction, or by other authority beyond the control of the seller, and where, if the tax were applied, its effect would become an income tax upon the seller, is exempt.

E. Dues and fees. Dues or fees paid to clubs, labor unions and fraternal organizations are exempt.

F. Exports. A sale made to a foreign citizen where delivery is made to a foreign country is exempt.

G. Federal and state prohibitions. A sale which the Borough is prohibited from taxing under the Constitution and laws of the United States or the Constitution and laws of the State of Alaska is exempt.

H. Freight and wharfage. Freight and wharfage charges, whether arising out of foreign, interstate or intrastate commerce, are exempt. Warehouse and storage services are taxable. The servicing, including freezing, storing, handling and wharfing, of fish awaiting shipment or in the process of being shipped is exempt.

I. Governmental agencies. A sale directly to the United States government, the state of Alaska and its political subdivisions, the Borough or any departments thereof, is exempt.

J. Insurance. The sale of insurance policies, guaranty bonds and fidelity bonds are exempt.

K. Loans. The loaning of money and interest charged for loans is exempt.

L. Funeral charges and services, professional services and supplies by a state licensed or certified medical doctor, dentist, osteopath, optometrist, psychologist, naturopath, audiologist, midwife, birthing center, acupuncturist, occupational or physical therapist, nurse's aide, registered or licensed practical nurse, or chiropractor, provided that the sale is within the scope of the state license or certificate, and hospital services, are exempt.

M. Contractors. Services under a building or construction contract or subcontract are exempt. This does not exempt construction or building activities which are incidental to, and/or performed to enable, performance or completion of, a contract or contracts whose primary or substantial purpose is not to build or construct and which is otherwise subject to the sales tax.

N. Newspapers. The sale of newspapers and periodicals by a carrier is exempt.

O. Nursery and baby-sitting services are exempt.

P. Public food. The sale of food and beverages to the public in high school cafeterias or lunchrooms which are operated primarily for teachers and students and not for a profit is exempt.

Q. Purchases made with food coupons, food stamps, or other type of allotments issued under 7 U.S.C. 2011-2036 (Food Stamp Program) 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. For

purposes of this subsection, the value of a food stamp allotment paid in the form of a wage subsidy as authorized under AS 47.25.975(b) is not considered to be an allotment issued under 7 U.S.C. 2011-2036 (Food Stamp Program).

R. Resale. A sale of a good made in contemplation of resale is exempt, including a good which is contemplated to be used as a part or ingredient in another good, provided that the end user pays sales tax under this Chapter on such good or on the final good.

S. Residential Rentals.

(1) The rental of a house or apartment, or room in a house or apartment, to any person for residential purposes is exempt.

(2) A rental is for residential purposes if the rental use to that person continues for thirty (30) or more consecutive days.

(3) A rental is presumptively not for residential purposes if the rental use to that person is for less than thirty (30) consecutive days. The presumption that the rental is not for residential purposes can be overcome by presentation of evidence that the renter currently resides in the Borough and presently intends to reside in the Borough indefinitely. Under this provision, unless the renter first obtains a certificate of exemption pursuant to section .040 of this Chapter, the tax due shall be collected and paid and an application for a tax refund sought thereafter pursuant to section .050 of this Chapter.

T. Sales of real property are exempt, however services performed by a real estate broker or agent are not exempt.

U. Salaries and wages received by an employee from an employer are exempt, but this exemption shall not apply to the gross remuneration for furnishing labor and materials for accomplishing a specified result.

V. Sales of advertising time or space and advertising services on or in radio, newspaper, television, movie theaters, telephone directories, programs and periodicals are exempt.

W. Student transportation. The service of transporting students to and from a school in vehicles is exempt.

X. Yakutat Fuel Dock. Sale or resale of any product or commodity for which the Borough has received, or is entitled to receive, a royalty by virtue of said product or commodity being delivered at the Yakutat Fuel Dock located in proximity to the Delta Western Tank Farm.

Y. Utility service provided by the Borough for sewer and water is exempt.

Z. Fees charged by a Bank for maintaining or servicing deposits or bank accounts.

AA. The fuel surcharge imposed on electrical utility usage, until the final billing cycle of fiscal year 2009.

6.40.040 Exemption Procedures. The burden of establishing any tax exemption is on the claimant.

A. No seller may allow an exemption for the reasons hereinafter stated unless the buyer first obtains a certificate of exemption and presents it to the seller at the time of the

sale or identifies the certificate by giving its number. The person making the purchase must be the person in whose name the certificate is issued, or a person authorized in writing by the certificate holder to make such purchases under the certificate. In the case of an exemption contained in subsection (H), (K), (L) or (V) of Section 6.40.030 of this Chapter, the seller shall first obtain a certification of exemption.

B. The seller shall indicate the certificate number on the sales slip and account for these sales on seller's sales tax return in the manner required. In addition, in the case of a sale for which an exemption under subsection (R) of Section 6.40.030 of this Chapter is claimed, the buyer must possess a valid Borough business license, and the seller must maintain a written record of that sale which includes the following information: the date of sale, description of item(s) purchased, name of person making the purchase, the CBY business license number of the buyer, specific resale intended, and the amount of the sale. That record shall be signed and sworn to by the buyer and submitted by the seller to the borough with the seller's return under Section 6.40.080.

C. Application for exemption certificate shall generally be signed by the buyer. In the case of an exemption contained in subsection (H), (K), (L) or (V) of Section 6.40.030 of this Chapter, an application for exemption certificate shall be signed by the seller. The application shall contain the information reasonably required by the Mayor.

6.40.050 Application for Tax Refund.

A. An application for tax refund may be filed by any buyer where:

1. He believes the sale to be exempt; and
2. He has paid the sales tax levied by the Borough.

Applications for refund shall be given by the seller to any buyer who has paid the tax and desires to request a refund.

The application may contain information reasonably required by the Mayor, but the seller shall provide the following information and shall sign or initial the application:

1. Who paid the tax;
2. The amount of tax paid;
3. The fact that payment was made; and
4. The date of payment.

The buyer shall state why it is claimed that the sale is exempt, sign the application and present it to the Mayor within thirty days of the sale or at the time the quarterly return is due to be submitted, whichever is later.

B. The burden of establishing the sale's exemption is on the buyer.

C. If the Mayor determines the sale to be exempt, he shall allow a credit on sales tax due from the application or pay cash to him, whichever he believes proper.

6.40.060 Collection.

A. A seller shall add the 5% sales tax to the selling price which the seller collects at the time of the sale or at the time of collection with respect to credit transactions. If the buyer refuses to pay the tax, the seller is exempt from any violations or penalties otherwise imposed if he/she reports to the Borough all the facts known to him concerning the sale and refusal within one business day of the refusal. Otherwise, if the seller fails to collect the tax or the buyer refuses to pay the tax, the seller is liable therefor. The tax is a debt from the buyer to the seller until paid and is recoverable at law in the same manner as other debts. The buyer is liable to the Borough for the tax notwithstanding the seller's duty to collect.

B. The tax shall be stated separately on any sales receipt or slips, rent receipts, charge tickets, invoices, statements of account, or other tangible evidence of sale.

C. Any director, officer, employee, agent or member of a corporation or limited liability company having control over or supervision of, or charged with the responsibility for, the collection or remittance of sales tax, or the filing of sales tax returns, on behalf of the corporation or company is personally liable for any uncollected and/or unpaid taxes, penalties and interest due the Borough. Dissolution, sale or other transfer of the corporation or company does not discharge this liability.

6.40.070 Tax Schedule. The seller shall add to the selling price an amount determined according to the following scale:

<u>Selling Price</u>	<u>Tax</u>
Under 0.05	none
.05 to .20 . . . . .	.01
.21 to .40 . . . . .	.02
.41 to .60 . . . . .	.03
.61 to .80 . . . . .	.04
.81 to 1.00 . . . . .	.05
1.01 to 1.20 . . . . .	.06
1.21 to 1.40 . . . . .	.07
1.41 to 1.60 . . . . .	.08
1.61 to 1.80 . . . . .	.09
1.81 to 2.00 . . . . .	.10
2.01 to 2.20 . . . . .	.11
2.21 to 2.40 . . . . .	.12
2.41 to 2.60 . . . . .	.13
2.61 to 2.80 . . . . .	.14
2.81 to 3.00 . . . . .	.15
3.01 to 3.20 . . . . .	.16
3.21 to 3.40 . . . . .	.17
3.41 to 3.60 . . . . .	.18
3.61 to 3.80 . . . . .	.19
3.81 to 4.00 . . . . .	.20
over 4.00, straight 5%	

6.40.080 Returns -- Payments. Sellers shall file returns and remit the tax collected in accordance with the following schedule:

A. Quarterly. Unless as otherwise provided for in this section, sellers shall on or before the last day of the month succeeding the end of each quarter-year ending March thirty-first, June thirtieth, September thirtieth and December thirty-first, prepare a return for the preceding quarter-year upon forms furnished by the Borough and pay the amount of the tax collected over to the Borough. Returns shall be filed with the Borough by five p.m. or postmarked prior to five p.m. on the last day of the month following the end of each quarter year. In the event the last day of the month falls on a Saturday, Sunday or legal holiday, the return may be filed and payment made on the first business day following.

B. Monthly. If a seller fails to file or is late in filing a return or in paying tax due, the Borough Manager may require the seller to submit returns and payment each month.

C. Sale of business to another person. A seller who sells his business to another person shall make a final sales tax return within fifteen days after the date of selling the business. The purchaser of the business shall withhold a portion of the purchase money sufficient to pay any sales tax, penalties and interest that may be due until the seller displays a receipt from the Borough showing that all tax obligations imposed by this Chapter have been paid. If any purchaser of a business fails to withhold this sum, he shall be personally liable for the taxes, penalties and interest owed by the seller to the Borough.

D. Upon termination of business activities. If a seller terminates his business without the benefit of a purchaser, successor, successors or assigns, he shall make a final return and settlement of tax obligations within fifteen days.

E. Filings to be continuous. A person who has filed a sales tax return will be presumed to be making sales in successive quarters unless he files a return showing termination or sale of his business.

2. Amounts received with the return shall be applied in the following order: (i) Penalties due, beginning with the oldest penalty; (ii) interest due, beginning with the interest due on the oldest quarter; and (iii) tax due, beginning with the tax due from the oldest quarter.

6.40.090 Form of Return. On forms furnished by the Borough, the seller shall furnish the following information, sign the form and certify that it correctly states the information purportedly set forth:

A. Total sales divided into all taxable and all non-taxable sales;

B. A substantiation of sales exempt from the tax by virtue of Section 6.40.030 (I) "Governmental Agencies";

C. A substantiation of sales claimed exempt under Section 6.40.030 (A) by a listing of each sale and the amount of each which was not taxable;

- D. A substantiation of all other sales claimed exempt;
- E. The amount of any refund which the seller wishes to claim for tax paid on purchases made for resale and attachment of "Application for Sales Tax Refund" forms indicating payment of the amount;
- F. The amount of tax due; and
- G. Such other information as may be reasonably required.

6.40.100 Seller's Compensatory Collection Discount. Any seller, whose return and payment for any quarter is timely, is entitled to a four percent collection discount, equal to four percent of the tax due or the sum of one hundred dollars whichever is less, in the form of a deduction from the amount of the tax due, provided that:

- A. The Seller files a return and remits the tax due in compliance with all other provisions of this Chapter; and
- B. The Seller does not exhibit a manifest failure to maintain proper accounting records and returns of the tax due.

6.40.110 Delinquencies.

A. Penalty and interest. A penalty equal to five percent of the delinquent tax shall be added to the tax for the first month, or any part thereof, and an additional five percent shall be added to the tax due for each month, or fraction thereof, of delinquency until a total penalty of fifteen percent has accrued. The penalty shall be assessed and collected in the same manner as the tax is assessed and collected.

In addition to the penalty provided above, interest at the rate of fifteen percent per year on the delinquent tax from the date of delinquency until paid shall accrue and be collected in the same manner as the delinquent tax is collected.

B. Additional procedures. If a seller fails to file the return or make payment in accordance with Sections 6.40.080 or 6.40.090, the Finance Director or his or her designee may do any or all of the following things:

1. Criminal action. File a criminal complaint against the seller in the proper court for violation of Sections 6.40.080 or 6.40.090;

2. Estimated Assessment. Make an estimated sales tax assessment against the seller, with the assessment based upon an estimate of the gross revenue received by the seller during the period. The estimate of gross revenue shall be derived from past returns of the seller, information obtained from an audit, the general economic level of the business community and, if available, returns of comparable businesses. Notice of the estimated assessment shall be sent to the last known address of the seller by certified mail. The estimated assessment shall be deemed to be admitted by the seller to be the amount due and owing to the Borough unless the Finance Director receives, within twenty (20) days of the date of the mailing of the notice of the estimated assessment, an accurate and complete sales tax return for the delinquent periods, together with the full remittance of all taxes, interest, penalty and other costs due, or the seller

remits the amount due under protest. Failure to file a written statement of protest and to remit in full the amount claimed by the Borough as owing within the time permitted under this subsection constitutes a waiver of the right to protest, appeal or otherwise challenge the amount due. The Finance Director shall issue a written ruling on a seller's protest within thirty (30) days of receipt of the protest and remittance if timely filed. The seller has the burden of proof;

3. Hearing. Notify the seller in writing by certified mail, sent to the seller's last known address, that a hearing will be held to determine the sales tax liability of the seller at a specified time and place not less than fifteen days after the date of the notice. The seller shall present himself at the hearing and make available for inspection his books, papers, records and other memoranda pertaining to gross revenues derived from his commercial transactions sufficient to enable the Borough to make a determination whether the return is required or tax due;

4. Publish. Publish in a newspaper of general circulation within the Borough, or if there is no such newspaper, post in three separate places in the Borough, the name and amount of sales tax, interest and penalty due from a seller who is delinquent under this Chapter.

5. Demand. Make written demand upon the seller, mailed to his last known address, for submission of the return and/or payment.

6. Civil enforcement. Collect the amount due by any method available in law, including but not limited to the filing and/or foreclosure of a lien or the institution of a civil action.

6.40.120 Period of Limitation. (repealed)

6.40.130 Record Keeping. A seller shall retain for a period of seven years all of the sales tax returns, reports, forms, records and supporting schedules as may be required by the Borough.

6.40.140 Tax as Lien. The tax, interest and any penalties imposed under this Chapter, and any administrative costs, including attorney fees and litigation costs, incurred by the Borough to collect the tax, shall constitute a lien in favor of the Borough upon all the real and personal property of the person owing the tax. The lien arises upon delinquency and continues until the liability is satisfied or the lien is foreclosed. A notice of lien may be filed in the office of the recorder for the Juneau Recording District. The Borough may also, at its discretion, file a notice of lien in any other recording district. When recorded, the sales tax 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; (3) mechanics' and materialmen's

for which claims for 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.

6.40.150 Rules and Regulations. The Mayor shall from time to time cause to be promulgated rules and regulations as are necessary and advisable to provide for the application and interpretation of this Chapter and to submit them to the Assembly for its adoption or rejection, and to cause to be provided methods and forms for reporting and collecting the tax in accordance with this Chapter and regulations.

6.40.160 Inspection of State Business License Returns.
(repealed)

6.40.170 Oaths. The Finance Director or Mayor is authorized and empowered to administer any oath necessary for the purpose of administering and enforcing the provisions of this Chapter.

6.40.180 Audit.

A. The Borough Manager may from time to time cause to be performed an audit of any individual or entity conducting sales or believed to be conducting sales within the Borough, and any sales tax returns filed with the Borough.

B. Upon written notification and request by the Borough, mailed to the seller at the seller's last known address, a seller shall present himself at a specified date and time and bring with him the books, papers, records and any other documentation of the business requested by the Borough. Said documents may include, but are not limited to, the following: Sales journals, general ledgers, bank statements, income statements, balance sheets, charts of account, and federal income tax returns.

C. Failure by the seller to comply with the provisions of paragraph B above shall constitute a violation of the Code of the City and Borough of Yakutat and shall be punishable by a fine of not more than One Thousand Dollars (\$1,000.00) which may be imposed in addition to injunctive and compensatory relief. Each day that a violation continues constitutes a separate violation.

6.40.190 Notification to the Borough.

A. Prior to the undertaking of business within the Borough which will result in sales tax liability under this Chapter, the owner of the business shall notify the Borough of such undertaking and provide the information required herein.

B. At the time of such notification, and thereafter as requested by the Borough, the owner shall provide the name and address of the business, the nature of the business undertaken, the months of operation of the business, the name of the person employed by the business who is responsible for collection and

payment to the Borough of Borough sales tax, and such other information or documentation as the Borough Finance Director deems necessary in order to ensure compliance with this Chapter. The owner shall also provide at that time, and on an annual basis thereafter, a current copy of the State of Alaska Business License issued to it, if it is required to have one. Thereafter, the owner shall notify the Borough of any changes in the information provided.

C. If, at the time of enactment of this ordinance, a business is already transacting business within the Borough, the owner of the business shall provide the required notification to the Borough as set forth in paragraph B above by the due date of the first sales tax return due after enactment of this ordinance.

6.40.200 Confidentiality of Records. All tax returns filed under this Chapter, all data obtained from such tax returns, and all financial information obtained from an inspection of records or audit conducted under this Chapter are confidential and may not be released by the Borough except upon court order or when necessary to enforce the provisions of or to collect the taxes due under this Chapter. The Borough may publish at any time the names of delinquent taxpayers and the amounts and periods of delinquency.

6.40.210 Claims against the Borough. Any claim brought against the Borough to seek a refund of any amount paid to the Borough under this Chapter, including a claim for refund or return of any sums claimed to have been paid in error, shall be commenced within two years of the due date of the tax return filing upon which the claim is based. Notwithstanding the foregoing, this section has no applicability to a claim based upon an asserted right to an exemption, which shall continue to be governed by CCBY 6.40.050.

