

Denali Borough, Alaska
Ordinance 14-06
Version E

INTRODUCED BY: ASSEMBLY MEMBER RUSTY LASELL

AN ORDINANCE AMENDING ARTICLE XI OF THE DENALI BOROUGH CHARTER, TITLED TAXATION, SECTION 11.01, TITLED TAX PROCEDURES AND THE DENALI BOROUGH CODE OF ORDINANCES BY ADDING CHAPTER 3.50, ESTABLISHING A 3% [SEASONAL] GENERAL SALES AND SERVICES TAX WITHIN THE DENALI BOROUGH

BE IT ENACTED by the Assembly of the Denali Borough, Alaska that:

Section 1. Classification. This ordinance is of a general and permanent nature.

Section 2. Purpose and intent. The purpose of this ordinance is to amend Article XI of the Denali Borough Charter, Section 11.01 and the Denali Borough Code of Ordinances by adding Chapter 3.50 to read as follows:

ARTICLE XI. TAXATION

Section 11.01 Tax Procedures

A severance tax shall be levied against the removal of any or all natural resources allowed to be taxed by State law. This tax shall be based on a percentage, as determined by ordinance, of the gross value of the extracted resource. The gross value may be converted to a cents per ton, yard, or other unit of measure as appropriate.

There shall be a sales tax levied against the rental of overnight accommodations. This tax will be established by ordinance in accordance with State law.

There shall be a [seasonal] general sales and services tax levied within the Denali Borough boundaries. This tax will be established by ordinance in accordance with state law.

It is the intent of this Charter that no new taxes will go into effect unless proposed by ordinance, ratified by a majority of the voters.

Any new taxes and the rate of levy of any new taxes or any increase in the rate of levy of any existing or future taxes will not take effect until ratified by a majority of the voters at an election. This restriction shall apply to all taxes levied by the borough including property taxes levied under Section 11.03.

The Assembly shall prescribe by ordinance the procedures for tax assessment and collection.

Chapter 3.50

[SEASONAL] GENERAL SALES AND SERVICES TAX

3.50.010 Purpose and Intent.

It is the purpose of the tax levied under this ordinance to raise revenue. [Revenue raised through this tax will be distributed as follows:

- A. An amount up to, but not exceeding 35% of the annual income of the sales tax shall be allocated to help support the mission of the Fire/EMS organizations of the Denali Borough.
- B. Under circumstances of Fire/EMS building expansion/repair or fire apparatus/ambulance replacement, the assembly may increase the allocation to the Fire/EMS.
- C. 65% of the annual income will go into the General Fund of the Denali Borough.]

[3.50.020 Effective dates of tax collection.

The annual collection period of the Sales tax will begin on May 1st of each calendar year and end on September 30th of each calendar year.]

3.50.020 Authority.

- A. AS 29.45.650 – 29.45.700
- B. Denali Borough Charter, Article XI, Section 11.01

3.50.030 Imposition of tax rate.

- A. There shall be levied and collected a 3% general sales tax on retail sales and rentals made and services performed or provided within the Denali Borough.
- B. The tax levied by this ordinance applies to ALL sales and services except those that are expressly exempted from the tax as listed under Section 3.50.040.

3.50.040 Exemptions.

Exemptions from the tax levied by this section are to be construed narrowly. The tax levied under this ordinance shall not apply to the following:

- A. Sales of professional services related to the field of medicine including, Doctors, Physicians Assistants, Mental Health Counselors, Dentistry, Naturopath, Chiropractor or Physical Therapist, Veterinarians, provided that sale is within the scope of the State license or certificate.
- B. Any controlled substances supplied or prescribed by any person listed in item A.
- C. Sales or rental of hearing aids, crutches, wheelchairs, or other items prescribed for use by any person in item A.
- D. Sales, rentals and services to a person that the Internal Revenue Service recognizes as an organization described in Section 501 (c) (3) or 501 (c) (4) of the Internal Revenue Code.
- E. Retail sales, services, or rentals at a school activity by a school approved group, raising funds for an approved purpose.
- F. Child day care, preschool and home babysitting services or a non-profit youth day recreation, summer or similar camps serving persons less than 18 years of age.
- G. Real estate such as land or housing rentals, leases, or sales.
- H. Transportation such as taxi, or Alaska Railroad, or sales of motor vehicles including snow machines and all terrain vehicles.

- I. Sales of Electricity or Telephone service
- J. Contracts to transport elementary or secondary students to and from school.
- K. Fuel for heating purposes or the use in motor vehicles including coal, wood, diesel, gasoline, [and] propane and the physical transfer of refined fuel.
- L. Sales of admission to school entertainments, school athletic events, and events conducted for the benefit of charitable or community organizations.
- M. Collection and transport of refuse.
- N. Rental of equipment and it's operator for the use of general building construction.
- O. Sales of non-prepared food or meals.
- P. Purchases made with (1) food coupons, food stamps, or other type of allotment issued under 7 U.S.C. 2011 – 2036 (Food Stamp Program); or (2) 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).
- Q. Any item or services currently being subject to a tax already provided by ordinance of the Denali Borough and city of Anderson.
- R. The sale, lease, rental, storage, consumption, or distribution in the state of Alaska of or the provision of services relating to a orbital space facility, space propulsion system, or space vehicle, satellite, or station of any kind possessing space flight capacity, including the components of them under AS 29.45.650 (h).
- S. Construction contracts awarded by the state of Alaska or a state agency, or a subcontract awarded in connection with the project funded under the construction contract under AS 29.45.650 (k)

[Once this ordinance is approved by the voters, any change to the exemptions shall be approved by the voters.]

3.50.050 Registration required.

A. It is unlawful to engage in business as [an operator] a seller without obtaining a certificate of registration under this section. Failure to comply will result in penalties per DBC 3.50.110.

B. Every[business] seller [operator] under this chapter shall file with the borough a registration application on a form prescribed by the borough no later than January 1 of each year of operation or no later than ten (10) days after the date of commencing business operations.

C. Registration forms are prescribed by the borough, and shall contain the following information:

1. Dates of operation
2. Type of operation
3. Preferred audit period per DBC 3.50.100
4. Point of contact

D. Upon receipt of a properly executed application, the borough shall issue a certificate of registration authorizing said seller [operator] to collect the tax. The certificate shall also state the address of the business to which it is applicable and dates of operation. The certificate must be prominently displayed at the regular place of business named therein.

E. The certificate of registration is not assignable and nontransferable. The seller [operator] shall promptly surrender the certificate to the borough when the [operator] seller permanently ceases to do business at the location named on the certificate. [An operator] A

seller shall submit a new or updated application for other changes, such as business name changes, owner/operator changes, change in business organization, and/or primary contact person. If the business is continued at the same location but there is a change in its name or form of organization, the [operator] seller making such change shall, in addition to submitting a new application, surrender his old certificate to the borough.

F. The borough may revoke a certificate of registration if [an operator] seller fails to comply with any of the provisions of this chapter.

G. [An operator shall not operate subject to the tax imposed in the valid certificate of registration, or has had its certificate of registration revoked.] Subject to penalties under DBC 3.50.110, a seller [business subject to this tax] A seller shall not operate without a valid certificate of registration. [or under a revoked registration, is subject to penalties and/or actions provided in DBC 3.50.110.]

3.50.060 Seller to add sales tax to selling price

Every seller shall add the amount of the sales tax levied by this ordinance to the total selling price and the tax will be stated separately on any sales receipt. A sign shall be prominently placed in each business that collects sales tax under this ordinance stating the amount of sales tax to be collected.

3.50.070 Submitting tax to the borough

Taxes will be paid to the Denali Borough on a quarterly basis and filed with the Borough [clerk] treasurer on or before the last day of the following month. Should that last day fall on a closed borough business day, the deadline will be extended to the next borough business day. [(September 30 and June 30)] (April 30, July 31, October 31, and January 31) will be the dates taxes are due into the borough office. Taxes may be considered delinquent if not remitted within 45 days.) The seller is responsible for remitting sales tax on all non-exempt sales to the borough.

[3.50.080 Distribution of revenue from sales tax

A. During the creation of the annual budget for the Denali Borough, the assembly will evaluate the requests of the local Fire and EMS organizations. The assembly shall allocate adequate funds to assist the Fire and EMS organizations in providing an appropriate level of fire and EMS response. This allocation will also be adequate enough to ensure the health and safety of the emergency responders.

The allocation of funding to the Fire/EMS organizations in this section shall not exceed the equivalent of 35% of the annual income from the sales tax except for the following:

At such times as the need arises for capital improvements to the fire stations or the replacement of Fire or EMS apparatus, the assembly may allocate additional funding to these projects.

B. During the creation of the annual budget, the assembly may allocate portions of the revenue generated by the Sales tax to help fund the following:

1. Major School Maintenance
2. Land Planning and Management
3. Capital Equipment Purchase/ Replacement
4. Cost of Sales Tax implementation and management]
- 5.

3.50.080 Confidentiality

A. Except as provided below, all returns filed with the borough for the purpose of complying with the terms of this chapter and all data obtained from such returns are confidential and shall be kept from inspection of all persons except officers, agents, and employees of the borough; provided however, that such returns and/or information obtained may be discussed by the assembly in public session if the operator affected consents in writing.

B. In the course of a criminal or civil action to enforce any provision of this chapter, the borough may allege, prove, publish, and produce for any purpose any return and/or information previously filed with the borough. The borough may deliver to [an operator] the seller or his authorized representative a copy of any return filed by him or on his behalf. The borough may also publish statistics concerning the information contained in returns, if the publication is done in such a manner that the information contained in a particular return cannot be identified.

C. It is unlawful for any person to divulge to another any return or any information obtained from a return filed with the borough except as provided in this section.

3.50.090 Sales tax audits

A. Record keeping required. Every [operator] seller shall keep and preserve for a period of three years records of all sales completed, the amount of sales received, the amount of taxes collected, and such other books or accounts as may be necessary to determine the amount of tax for which the [operator] seller is liable hereunder. Each [operator] seller shall permit the borough or its agent to examine, inspect, and copy said records, books, and accounts at any reasonable time, at the [operator's] seller's place of business within the borough or the borough office, whichever is more convenient for the operator.

B. Standard audits. The borough may conduct audits during two periods each calendar year; June 1 through June 15th, inclusive, or October 1st through October 15th, inclusive. Borough requests for books, accounts or copies of specific records shall be in writing to the [operator] seller and the [operator] seller shall have thirty days to respond. All audits shall be performed by a professional auditor licensed as a certified public accountant in the state of Alaska and retained for that purpose. The borough shall send notice of intent to audit no later than April 1 of the year the audit is to take place for the audit period June 1 through June 15th; and no later than August 1 for the audit period October 1 through October 15th.

C. Special audit. The borough or its agent, upon thirty days' written notice, shall be permitted to examine and inspect said records, books, and accounts at the [operator's] seller's place of business within the borough, or at the borough office. In the event of a special audit, the [operator] seller shall be notified in writing of the reasons compelling the special audit. Such audits may be conducted by the borough if it has reason to believe that the reporting practices of the [operator's] seller do not meet requirements of this chapter, or that the [operator] seller or its records will not be available during the regular audit periods. All audits shall be performed by a professional auditor licensed as a certified public accountant in the state of Alaska and retained for that purpose.

D. Failure to comply with audit. Any [operator] seller who fails to comply with the provisions set forth in this section may be subject to penalties per DBC 3.50.100. For the purpose of ascertaining the correctness of any return, or determining the amount of tax collected or which should have been collected by any operator, the mayor or his agent may hold audits, investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records, accounts or memoranda of any such [operator] seller, and may require the attendance of any person through issuance of a subpoena which

shall be enforced under the Alaska Rules of Civil Procedure in the same manner as subpoenas issued by an officer or agency of the state.

3.50.100 Penalties and interest.

- A. Operating without a valid registration is subject to a penalty of \$100.00 per day.
- B. Any failure to file a timely return and to transmit tax to the borough as required by this chapter shall be considered delinquent. A delinquent account shall be subject to:
 - 1. A penalty of twelve percent (12%) of taxes due.
 - 2. Interest on unpaid taxes shall be assessed at the statutory rate set forth in AS [45.45.010] ~~29.45.650~~ (d).
- C. Penalties and interest are due immediately upon accrual and are delinquent thereafter.
- D. Taxes delinquent for ninety (90) days are subject to an additional penalty of one-half of the taxes due.
- E. Failure to comply with audit provisions in this chapter may be assessed a penalty of \$150 per day commencing thirty one (31) days after receiving notice of intent to audit, or upon a specified audit date, whichever is later until provisions have been satisfied.
- F. Any tax or penalty assessed that is delinquent for more than ninety (90) days is subject to civil action per DBC 3.50.130.

3.50.110 Estimated Taxes.

If the borough is unable to ascertain the amount of tax due from an operator in any quarter because the operator has failed to file a return as required, or has filed a false, inaccurate, or incomplete return, or because the operator has failed to keep accurate books and records as required, or has falsified records, the borough may make an estimate of the amount of tax due based on any evidence in its possession. The treasurer shall mail or deliver to the operator written notice of the amount of the estimate, and this amount shall be presumed to correctly state the amount of the tax due from the operator to the borough unless the operator files an accurate return and transmits the taxes due as shown thereon to the treasurer, not later than thirty (30) days after the date on which the treasurer mails or delivers the notice. A notice is sufficient under this section if it is either actually delivered to the operator, or if it is mailed to the operator by certified mail, return receipt requested, at the operator's most current address as contained in the borough's tax records.

3.50.120 Violations.

Any operator who fails to collect or remit all or any portion of the tax provided for in this chapter, or fails or refuses to comply with the provisions of this chapter, or remits or rebates to an individual occupant or other person whether directly or indirectly and by whatsoever means, all or any part of the tax levied under this chapter, or makes in any form of advertising, verbally or otherwise, any statement which implies that the operator is absorbing the tax, or paying the tax for the individual by an adjustment of prices or in any manner whatever, and any person who makes any false statement or misrepresents any fact for the purpose of securing a tax exemption under the terms of this chapter, and any person who otherwise violates any provision of this chapter, is guilty of a violation.

3.50.130 Civil action authorized.

A. The borough may institute a civil action, pursuant to AS 29.25.070, to enjoin an operator from engaging in a business under this chapter until the operator has registered. The borough may also recover from the operator the civil penalty imposed by this section and the borough's administrative costs of collection incurred in enforcing this section.

B. The borough may institute a civil action against an operator to recover taxes which the operator failed to collect, or which the operator collected and failed to transmit to the borough, together with the penalties, interest, and administrative costs of collection imposed by DBC 3.50.110. In any such action, a tax return or estimated tax under DBC 3.50.120 shall constitute prima facie evidence of the amount of tax which was, or should have been, collected.

C. The borough may institute a civil action against an operator who fails timely to file a return in order to recover the penalties and administrative costs of collection imposed by this section.

D. Pursuant to AS 29.25.070, the borough may institute a civil action against any person who violates a provision of this chapter. In addition to injunctive and compensatory relief, the borough may recover its administrative costs of collection and a civil penalty. The borough may bring an action to enjoin a violation or to recover a civil penalty notwithstanding the availability of any other remedy. Each day that a violation of this chapter continues constitutes a separate violation.

3.50.140 Tax lien.

A. The tax, penalty, administrative costs of collection, and interest imposed by this chapter shall constitute a lien in favor of the borough upon all the operator's real and personal property. The lien arises upon delinquency and continues until the liability for the amount is satisfied or the property is sold at foreclosure sale. The lien is not valid as against a mortgagee, pledgee, purchaser or judgment creditor until notice of the lien is filed in the office of the recorder in the district in which the property is located in the manner provided for federal tax liens in AS 40.19.010 through 40.19.050 as they currently exist or may be subsequently amended. AS 40.19.010 through 40.19.050 apply to the tax liens arising under this chapter, and are incorporated by reference as if fully set forth.

B. When recorded as provided in subsection A. of this section, such a lien has priority over other liens except as provided in AS 29.45.650 as it currently exists or may be subsequently amended.

C. Sales tax liens on property shall be enforced by foreclosures conducted as provided by law for enforcement of judgment liens.

3.50.150 Sale of business.

If any operator sells his business to another person or entity, the operator shall file a final tax return and transmit all tax due within thirty (30) days after the closing date of the sale.

3.50.160 City sales tax.

The borough hereby authorizes the city of Anderson to levy and collect a sales tax on sources and transactions other than those taxed under this chapter.

3.50.170 Severability.

If a court of competent jurisdiction determines that any provision of this chapter or any application thereof to any person or circumstance is invalid, the remainder of this chapter and its application to other persons or circumstances shall not be affected thereby.

3.50.180 Appeal.

- A. A person aggrieved by the application or interpretation of any provision of this chapter shall appeal to the Board of Review per DBC 5.20.120.
- B. A person aggrieved by the final action of the borough may appeal to the superior court in the manner provided in DBC 5.20.130.

3.50.190 Tax Holidays.

Sales and services of any or all taxable items identified under this section and sold in the Denali Borough during "tax holidays" periodically declared by the borough assembly by resolution during the period from October 1 to April 30 of the fiscal year will be tax exempt. The assembly may declare a tax holiday solely in its discretion and may exclude application of any taxable item in its sole discretion.

Section 4. Effective Date. This ordinance becomes effective on January 1, 2016 upon adoption by the Denali Borough Assembly, signature of the mayor and approved by a majority vote at the next regular election.

DATE INTRODUCED: APRIL 9, 2014
 FIRST READING: APRIL 9, 2014
 PUBLIC HEARING: MAY 14, 2014

PASSED AND APPROVED by the Denali Borough Assembly this ____ day of _____, 2014.

CLAY WALKER, MAYOR

ATTEST: _____
GAIL PIEKNIK, BOROUGH CLERK