
CHAPTER 4.06

SALES TAX

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4.06.05 – Sales Tax Levy

- A. A sales tax is levied on all sales, rents, and services made in the city, including those made on credit, at the rate of four percent of the selling price.
- B. The burden of the sales tax rests upon the buyer. The tax is to be collected by the seller as further provided in this chapter.
- C. Taxes collected shall be deposited in the general fund of the City of Adak. (Ord. 01-2001-15, 2001; Ord. 10-4.06(2011-03), 2010).

4.06.10 – Definitions

For the purposes of this chapter, the following words or phrases have the meanings contained herein:

- “**Buyer**” means the person who, in the ordinary meaning of the term, takes title to, takes possession of, or buys property or receives services for consideration.
- “**Common Carrier**” means a person who regularly transports cargo for a fee established pursuant to a posted and approved tariff rather than established on a customer by customer basis.
- “**Property**” means any item, equipment, or other material subject to ownership.
- “**Retail sales**” or “**Sale at retail**” means every sale made to final buyer and not made in consideration of a resale in the regular course of business.
- “**Retail sale within the city**” means a retail sale resulting from an offer made from the seller to the buyer within the city or accepted by the buyer within the city, or services and rental taking place wholly within the city.

“Sale” means the transfer of rights in the property from seller to a buyer and includes the sale of goods, renting of property, and sale of services.

“Sale of Service” means the selling price received for a service provided by an establishment whose principal activity is to furnish service to the consuming public, and includes, but is not limited to, services provided by a barber shop, hotel, restaurant, automobile repair shop, laundry, telephone company, cable television company, and the like; it does not include wages, salaries, or other payment for labor performed for an employer.

“Seller” means every person, corporation or other entity whether acting as principal or agent, making sales at retail to a buyer. (Ord. 01-2001-15, 2001; Ord. No. 2009-01).

4.06.20 – Exemptions

The following sales are exempt from sales taxation:

1. A casual and isolated sale not made in the regular course of business is exempt.
2. Sale of property or services by a church is exempt except where the sale of services is incidental to a business for profit.
3. Dues or fees paid to clubs, and fraternal organizations are exempt.
4. Individual sales of arts and crafts, and cured or smoked fish are exempt.
5. A sale that the city 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.
6. Freight and wharfage charges arising from the use of the City operated port facilities are exempt, except that fees for warehouse and storage services are taxable.
7. A sale directly to the United States government, the State of Alaska and its political subdivisions, and the city or any departments thereof is exempt.
8. The sale of insurance policies, guaranty bonds and fidelity bonds is exempt.
9. The loaning of money and interest charged for loans are exempt.
10. Medical, dental, and hospital services, and the sale of hearing aids and medical preparations when prescribed by a licensed practitioner, are exempt.
11. A sale on which a sales or use tax is paid to another taxing jurisdiction shall be exempt up to the amount of the tax paid to the other taxing jurisdiction. The buyer claiming this exemption must first pay the tax to the seller and then submit an application for a tax refund under section 4.06.50.
12. Sales made by non-profit organization which do not have paid employees and which do not keep normal business hours are exempt.
13. Sales of the service of transportation of goods processed or manufactured in the city and shipped outside Alaska. For goods sold outside of Alaska where the cost of delivery is included in the selling price, the Seller shall separately identify delivery charges in its invoice to the buyer and shall not charge or collect sales tax on delivery charges.
14. The sales of all utilities operated by the city are exempt.
15. The sale of raw seafood product as defined in 4.13.030(d) is exempt. (Ord. 01-2001-15, 2001; Ord. 03-2003-01, 2003; Ord. No. 2009-01; Ord. 12-2013-079, 2012).

4.06.25– Exemption Procedure

The burden of establishing any tax exemption is on the claimant. 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 the giving its number. The reasons for exemption are as follows: 1) The buyer is exempt; or 2) The buyer is purchasing for resale from which a sales tax will be collected and the specific retail sale is one in a series of sales in a regular basis wherein the seller functions as a wholesaler and the buyer as a retailer.

The seller shall indicate the certificate number on the sales slip and account for these sales on the sales tax return in the manner required.

Application for an exemption certificate shall be signed by the buyer if based on his/her tax-exempt status, or by the buyer and the seller if based on a sale for resale.

The application shall contain the information reasonably required by the City Manager. (Ord. 01-2001-15, 2001, Ord. 02-2002-15 §5, 2002)

4.06.30 – Seller to Collect Sales Tax

A seller shall add the four percent sales tax to the selling price that the seller collects at the time of the sale or at the time of collection with respect to credit transaction.

If the buyer refuses to pay the tax, the seller is exempt from any violations or penalties otherwise imposed provided a report is made to the city concerning all facts known about the sale and refusal within three business days of the refusal. Otherwise, if the buyer refuses to pay the tax, the seller is liable therefore. 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 city for the tax notwithstanding the seller's duty to collect.

The tax shall be stated separately on any sales receipt, sales slip, rent receipts, charge tickets, invoices, statements of account, or other tangible evidence of sale. (Ord. 01-2001-15, 2001)

4.06.35 – Filing Returns

Sellers shall file returns for taxes collected on a monthly basis. On or before the last business day of the month, sellers shall prepare a return for taxes collected during the preceding month on forms furnished by the City. Returns together with full payment of all taxes due shall be filed at the city office. (Ord. 01-2001-15, 2001)

4.06.40 – Form of Returns

On forms furnished by the City, the seller shall furnish the information specified below, sign the form, and certify that it correctly states the information set forth. The information to be furnished is as follows:

1. total sales made for the month;
2. total taxable sales for the month;
3. total non-taxable sales for the month, to include the amount of sales made outside the city limits, and the amount of all other sales declared to be exempt and the names of those organizations claiming the exempt status;
4. amount of tax due, including the amount of any deduction taken by the seller under the compensatory collection discount provided in this chapter;
5. such other information as may be reasonably required. (Ord. 01-2001-15, 2001)

4.06.45 – Procedure on Delinquencies

- A. A penalty equal to five percent of the delinquent tax shall be added to the tax for the first month and ten percent for the following month. The penalty shall be collected in the same manner as the tax is collected.
- B. In addition to the above penalty, interest shall accrue at the rate of 10.5 percent per annum on the delinquent tax from the date of delinquency and be collected in the same manner as the delinquent tax is collected.
- C. The City Manager, with approval of the council, may determine that a penalty not be imposed under this section provided notice is given to the City Manager or prior to the day taxes are due and circumstances warrant. (Ord. 01-2001-15, 2001, Ord. 02-2002-15 §6, 2002, Ord. 13-2014-084, 2014)

4.06.50 – Application for Tax Refund

- A. An application for a tax refund may be filed by any buyer who believes the sale to be exempt.
- B. Applications for refund may be filed by any buyer who believes the sale to be exempt.
- C. Applications for refund shall be furnished to all sellers and shall be given by the seller to any buyer who has paid the tax and desires to request a refund.
- D. The seller shall provide the information specified below and shall sign the application. The information provided shall include:
 1. Who paid the tax;
 2. the amount of tax paid;
 3. the fact that payment was made; and
 4. the date of payment.
- E. The buyer shall state why he or she claims that the sale is exempt, sign the application, and present it to the City Manager or within ten days of the sale. The burden of establishing the sale's exemption is on the buyer. (Ord. 01-2001-15, 2001, Ord. 02-2002-15 §7, 2002)

4.06.55 – Record Keeping

A seller shall retain for six years all of the sales tax returns, reports, forms, records, and supporting schedules required by the City. (Ord. 01-2001-15, 2001; Ord. No. 2009-01, 2009)

4.06.60 – Tax as Lien

The tax, interest, and penalty imposed under this chapter shall constitute a lien in favor of the City upon all the property of the person owing the tax. The lien arises upon delinquency and continues until the liability is satisfied or the lien is foreclosed. The lien is not valid as against a mortgagee, pledgee, purchaser, or judgment lien creditor until notice of the lien is filed in the office of the recorder for the recording district in the manner provided for federal tax liens under AS 43.10.090—43.10.150 which by this reference are incorporated herein as if set forth in full. (Ord. 01-2001-15, 2001)

4.06.65 – Rules and Regulations

The City Manager may from time to time cause to be promulgated rules and regulation as is necessary and advisable to provide for the application and interpretation of this chapter and to submit them to the council for its adoption or rejection.

The City Manager shall provide methods and forms for reporting and collecting the tax in accordance with this chapter and any regulation adopted thereto. (Ord. 01-2001-15, 2001, Ord. 02-2002-15 §8, 2002)

4.06.70 – Period of Limitation

Any amount of any tax imposed under this chapter may be determined and assessed at any time within a period of six years after the tax became due and payable. The period shall begin on the date when a return is required to be filed. Where no return has been filed, then the period does not begin to run until the discovery of the delinquency occurs. No suit or other proceeding for the collection of the tax shall begin after the expiration of the period. (Ord. 01-2001-15, 2001; Ord. No. 2009-01, 2009)

4.06.75 – Penalty

- A. Any person, firm, or corporation violating any of the provisions of this ordinance shall be fined up to \$100.00 for each offense.
- B. In addition to the personal liability provided in Section 4.06.140, all officers of a corporation and all members of a partnership or a limited liability company required to collect, account for, and pay over any tax imposed by this chapter who willfully fail to collect, account for, or pay over such tax or who willfully attempt in any manner to evade or defeat any such tax, or the payment thereof, are subject to, in addition to other penalties provided by law, a penalty equal to one hundred fifty percent of the total amount of the tax not collected, accounted for, paid over, or otherwise evaded. An officer of a corporation or a member of a partnership or a limited liability company shall be deemed to be subject to this section if the corporation, partnership, or limited liability company is subject to filing returns or paying taxes imposed by this chapter and if such officers of corporations or members of partnerships or limited liability companies voluntarily or at the direction of their superiors assume the duties or responsibilities of complying with

the provisions of this Chapter on behalf of the corporation, partnership, or limited liability company. (Ord. 01-2001-15, 2001; Ord. 09-4.06, 2009)

4.06.80 – Interpretation

The scope of the tax levied shall be broadly construed. Exemptions and exclusions from the tax shall be narrowly construed and limited to the specific activities and transactions that expressly and clearly fall within the designations in the sales tax ordinance of exempted or excluded activities or transactions. (Ordinance No. 2009-01, 2009)

4.06.90 – Confidentiality of Returns

- A. Returns which include remittance in full of all sales taxes due and which are timely and properly filed with the city for the purposes of complying with the terms of the sales tax ordinance and all data obtained from such returns are confidential, and such returns and data obtained therefrom shall be kept from inspection by all private persons.
- B. The disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any seller or agent of any seller required to collect sales taxes or file returns under the sales tax ordinance, who fails to file a return or who fails to remit in full all sales taxes due by the date required is not prohibited.
- C. A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the city manager a release of tax information request signed by the registered owner of the business.
- D. The city may disclose any information, data or records of a seller that are in the possession of the city in any civil or criminal action brought by the city in the enforcement of any provision of this title. (Ordinance No. 2009-01, 2009)

4.06.100 – Investigations

For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax collected or which should have been collected by any seller, investigations and hearings concerning any matters or memoranda of any seller, may be held and the city may require the attendance of any seller or buyer, or any officer or employee of a seller or buyer at the hearing, and may require production of all relevant business records. (Ordinance No. 2009-01, 2009)

4.06.110 – Estimate of Tax Due.

- A. In the event that the city is unable to ascertain the amount of tax due from a seller because the seller has failed to keep accurate records, to allow inspection of records, has failed to file a return or has falsified records, then the city shall estimate the tax due based upon any information available to it. The estimate, including interest and penalties due to the date of the estimate, shall become final for the purpose of determining liability of the seller thirty calendar days from the date the city mails notice of the estimate to the seller unless the seller earlier files an accurate, auditable return indicating a lesser liability or unless a greater liability is shown upon audit.

- B. If the city audits a seller following the filing of an estimate under this section by the city, and the audit shows that more tax is due than was set out in the city's estimate, the seller shall be liable for an audit fee equal to the cost to the city of the audit, in addition to any other penalties or fees due under the sales tax ordinance. (Ordinance No. 2009-01, 2009)

4.06.120 – Seller - Liability to the City - Successor Liability to the City

- A. All sales taxes collected or which should have been collected pursuant to this chapter are city monies for which the seller is liable and at all times accountable to the city. All such city monies shall be held by the seller in trust for the city in an account that is separate from other monies of the seller.
- B. Any person acquiring an ownership interest in an ongoing business or the accounts receivable of a business, whether by purchase, assignment, foreclosure, conveyance in lieu of foreclosure, relinquishment or otherwise, shall be liable for the payment of taxes, penalties and interest accruing and unpaid to the city on account of the operation of the business by the former owner, owners or assigns. Each person acquiring any interest in a business or the accounts receivable of a business shall request a statement from the city of the actual and estimated amount of current and past due taxes, penalty and interest of the business. The person acquiring the business or accounts receivable shall withhold from the acquisition price and pay over to the city the current taxes due and the past due taxes, interest and penalty.
- C. The liability of a purchaser or other person acquiring a business or the accounts receivable of a business for outstanding taxes, penalties and interest accrued and unpaid by the former owner shall be limited to an amount stated in writing by the city in response to a request from the purchaser for a statement of sales tax liability. (Ord. No. 2009-01)

4.06.130 Place of Sale, Rental or Service

- A. A taxable rental occurs if any significant element of the making or performance of the rental agreement occurs within the city during the tax year, including, but not limited to, the completion of the execution of the rental agreement, the making of an oral rental agreement, the delivery of the fully executed rental agreement, the transfer or relinquishment of possession of the rented space or property to the lessee or renter, the possession or use of the rented space or property regardless of when the rental agreement was made or the use or possession of the space or property began and shall be taxable for the portion of the rental period that occurs during the tax year.
- B. A taxable sale or performance of a service occurs when any significant element of the sale or performance of the service occurs within the city during the tax year, including the offer and acceptance, the completion of the performance of a service, and the performance of any part of a service. The sale within the city of a service is taxable without regard to where the service is or is to be performed. The entire value of an unsegregated service is taxable if any part of the service is performed within the city during the tax year. The performance of a service is not taxable if the tax under this chapter was paid on the sale of the service. If a service sold outside the city is to be performed in part or in whole inside the city, the person providing the service is

taxable without regard to where the service is or is to be performed. The entire value of an unsegregated service is taxable if any part of the service is performed within the city during the tax year. The performance of a service is not taxable if the tax under this chapter was paid on the sale of the service. If a service sold outside the city is to be performed in part or in whole inside the city, the person providing the service is the seller under this chapter and shall be liable for the collection and remittance of the tax. (Ord. No. 2009-01).

4.06.140 – Personal Liability of Corporate Officer for Unpaid Taxes.

- A. Any person who receives or collects a tax or any money represented to be a tax from another person holds the amount so collected in trust for the benefit of the city and is liable to the city for the full amount collected plus any accrued penalties and interest on the amount collected.
- B. Persons owning stock of ten percent (10%) or more of the total of corporations or ten percent (10%) interest in limited liability companies with thirty-five (35) or fewer owners and exercising responsibility for fiscal management, shall be jointly and severally liable for sales taxes levied or otherwise required to be collected or paid to city by such corporations or limited liability company when such taxes become due and unpaid to the extent that such taxes accrued while such person was exercising responsibility for fiscal management.
- C. The dissolution of a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership does not discharge an officer, member-manager, manager, or partner's liability for a prior failure of the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership to file a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.
- D. If the corporate officers, limited liability company member-managers or managers, or partners elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership shall provide the city with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross sales multiplied by the applicable sales tax rate.
- E. Upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of this Chapter, and who is not jointly and severally liable under Section 4.06.140(A), shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation, partnership, limited

partnership, limited liability partnership, or limited liability company pursuant to this part.

- F. The officer, member, manager, partner, or other person liable under 4.06.140(E) shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, plus interest and penalties on those taxes.
- G. Personal liability may be imposed pursuant to this section, only if the city can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company had included tax reimbursement in the selling price of, or added tax reimbursement to the selling price of, tangible personal property sold in the conduct of its business, or when it can be established that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company made a purchase subject to tax and failed to pay the tax.
- H. For purposes of this section "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action. (Ord. 09-4.06, 2009)

4.06.150 – Withholding of Personal Property of Taxpayer or Employer Failing to Withhold; Notice; Designation of Address of Depository Institution; Liquidation of Financial Assets; Liability for Failure to Withhold

- A. The City Manager may by notice, served personally or by first-class mail, require any employer, person, officer or department of the state, political subdivision or agency of the state, having in their possession, or under their control, any credits or other personal property or other things of value, belonging to a taxpayer or to an officer of a person liable for unpaid tax under section 4.06.140 of this Chapter or person who has failed to withhold and transmit amounts due pursuant to this section, to withhold, from the credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the taxpayer or the amount of any liability incurred by that person for failure to withhold and transmit amounts due from a taxpayer and to transmit the amount withheld to the city at the times that the City Manager may designate. However, in the case of a depository institution, as defined in Section 19(b) of the Federal Reserve Act (12 U.S.C.A. Sec. 461(b) (1)(A)), amounts due from a taxpayer under this section shall be transmitted to the city not less than 10 business days from receipt of the notice. To be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to any branch or office where the City Manager reasonably believes credits or other property is held.
- B. When the city, pursuant to this section issues a levy upon, or requires by notice, any person, or financial institution, as applicable, to withhold all, or a portion of, a financial asset for the purpose of collecting a delinquent tax liability, the person, or financial institution, that maintains, administers, or manages that asset on behalf of the taxpayer, or has the legal authority to accept instructions from the taxpayer as to the disposition of that asset, shall liquidate the financial asset in a commercially reasonable manner within 90 days of the issuance of the order to

withhold. Within five days of liquidation, the person, or financial institution, as applicable, shall remit to the city the proceeds of the liquidation, less any reasonable commissions or fees, or both, which are charged in the normal course of business.

- C. If the value of the financial assets to be liquidated exceeds the tax liability, the taxpayer may, within 60 days after the service of the order to withhold upon the person, or financial institution, instruct the person, or financial institution, as to which financial assets are to be sold to satisfy the tax liability. If the taxpayer does not provide instructions for liquidation, the person, financial institution, or securities intermediary shall liquidate the financial assets in a commercially reasonable manner and in an amount sufficient to cover the tax liability, and any reasonable commissions or fees, or both, which are charged in the normal course of business, beginning with the financial assets purchased most recently.
- D. Any corporation or person failing to withhold the amounts due from any taxpayer and transmit them to the city after service of the notice shall be liable for those amounts. However, in the case of a depository institution, if a notice to withhold is mailed to the branch where the account is located or principal banking office, the depository institution shall be liable for a failure to withhold only to the extent that the accounts can be identified in information normally maintained at that location in the ordinary course of business. (Ord. 09-4.06, 2009)

4.06.160 – Security for the Payment of Taxes

- A. If the City Manager finds that a tax imposed by this title is insecure, the City Manager may require a taxpayer to:
 - (1) provide security for the payment of taxes; or
 - (2) establish a tax escrow account at a bank or other financial institution.
- B. The security may consist of:
 - (1) a cash deposit filed with the City Manager;
 - (2) a surety bond; or
 - (3) other security as permitted by the City Manager.
- C. The amount and form of the security shall be set by the City Manager, except that the amount may not be more than double the amount of taxes that the City Manager estimates will be due from the taxpayer during the succeeding 12 months.
- D. The City Manager shall give notice to a taxpayer from whom security or the establishment of a tax escrow account is required under this section.
- E. The tax escrow account must be established not later than the 10th day after the date notice is received from the City Manager requiring the establishment of the account.
- F. Before the City Manager requires a taxpayer to establish a tax escrow account, the City Manager must determine that:
 - (1) The taxpayer remitted or should have remitted a monthly average of \$ 500 or more in tax collected from customers for the six-month period preceding the date that the notice requiring the establishment of a tax escrow account is sent by the City Manager to the taxpayer; and

(2) The taxpayer:

(a) failed to file two or more tax returns during the 12 months preceding the date that the notice requiring the establishment of a tax escrow account is sent by the City Manager to the taxpayer;

(b) is insolvent because the taxpayer's liabilities exceed the taxpayer's assets or the taxpayer is unable to pay the taxpayer's debts as they become due;
or

(c) has been notified that security is required under this section but has failed to provide evidence of the security on or before the 30th day after the date the security was requested.

G. If a taxpayer does not furnish security to the City Manager or establish a tax escrow account as required by the City Manager before the expiration of 10 days following the day on which notice is received, the city may:

(1) bring suit for an order enjoining the taxpayer from engaging in business until the security is furnished or the tax escrow account is established; or

(2) pursue any other remedies or collection actions available to the city under this chapter to ensure the security is furnished or the tax escrow account is established.
(Ord. 09-4.06, 2009)