



CITY OF WASILLA

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Code Ordinance

ORDINANCE SERIAL NO. 93-59

AN ORDINANCE OF THE CITY OF WASILLA, ALASKA AMENDING CHAPTER 6.50 (SALES TAX) OF THE WASILLA MUNICIPAL CODE.

BE IT ORDAINED AND ENACTED BY THE CITY OF WASILLA, ALASKA AS FOLLOWS:

SECTION I. Classification. This ordinance is of a general and permanent nature and shall become a part of the Wasilla Municipal Code.

SECTION II. Purpose. To amend Chapter 6.50 of the Wasilla Municipal Code on charitable gaming and the enforcement procedures.

SECTION III. Amendment. Chapter 6.50 and it's underlying ordinances are amended as follows:

SECTION IV. Repeal Repeal the existing language of sections 6.50.180-6.50.220 and replace them with the new language for sections 6.50.180-6.50.220.

There are some new paragraphs added to the sales tax code, which will cause some renumbering of the existing paragraphs, these renumberings will be handle administratively.

6.50.020(C) - Definitions. "Designated intangible personal property" includes gaming sales, services, or other related activities or sales authorized by A.S. 5.15.010 - 5.15.995.

6.50.020(G). "Retail Sale" means the transfer of title to tangible or designated intangible personal property...

6.50.020(H) "Sale" includes all retail sales, rentals, sale of services and retail sale of designated intangible personal property.

6.50.030(C).Tax Levied Rate. For purposes of the tax levied by this section, a sale of designated intangible or tangible personal property...

6.50.040(I) Examples of Taxed Transactions. Gross proceeds derived from the operation of punchboards, slot machines, marble machines, jukeboxes, merchandise-vending machines or amusement devices of any kind, and self-service laundry and drycleaning machines and ~~pull tabs and similar gaming~~ devices.

6.50.040(O) Examples of Taxed Transactions. The ideal net of pulltabs, bingo games and similar gaming devices as more fully set forth in the ordinance in section 6.50.060

6.50.050(K). Exceptions. Sales of tickets for school entertainments, school athletic events, and activities conducted for charitable purposes or community benefits. However, this exception is specifically not intended to except those sales of pull-tabs, bingo games, or other gaming activities within the scope of "designated intangible personal property" as defined and as taxed within the scope of this ordinance.

6.50.060 - Tax Applied To "Ideal Net" of Gaming Proceeds. The purchase of pull-tabs, bingo games, or any other "designated intangible personal property" shall require the seller of such designated intangible personal property to remit the sales tax on only an equivalent calculation of the "ideal net" portion of the gross proceeds or total transaction price. As used herein, the term "ideal net" is intended to refer to that term as defined by 12 AAC 34.09.90(1) meaning the total amounts of receipts that would be received if every individual pull-tab ticket in a series were sold at its face value less the total predetermined prizes available to be paid out in the series. As applied to the sale of bingo games or other designated intangible personal property, the tax is to apply to an equivalent calculation of "ideal net" so as to make the tax applicable to the gross receipts received by the seller on the designated intangible personal property, less prizes awarded on the series, set of games, or contest for which chances to receive a specified prize or specified prizes have been sold. To facilitate the collection and payment of the sales tax upon the ideal net portion of the gross proceeds or total amount of the separable transaction prices, the seller of designated intangible personal property may, if the seller so chooses, assume or absorb the amount of the sales tax payable by the purchaser of the designated intangible personal property.

6.50.080(A) Tax Returns- Contents- Penalty for Delinquency. The tax payable shall be delinquent if not received on or before the 20th day of the month in which the tax form, with payment, is to be transmitted.

The US Postal Service Postmark shall determine the date of filing mailed returns for purposes of determining delinquency interest payable on delinquent tax amounts as set forth above. In addition, a late payment penalty equal to five percent (5%) per month on the amount of sales tax due shall be added to all sales tax returns until the tax, interest, and penalty has been paid. The penalty set forth herein shall be assessed and collected in the same manner as the tax is assessed and collected. The late payment penalty shall be equal to five percent (5%) per month, applicable to any full month of delinquency and further applicable to any partial month of delinquency., However, the late payment penalty of five percent (5%) per partial or full month shall not exceed a cumulative late penalty of twenty-five percent (25%) . For example: January sales taxes are due on February 20th, on February 21st a five percent (5%) late penalty would be assessed on any delinquent taxes. On March 21st another five percent (5%) late penalty would be assessed, until a maximum cumulative late penalty of twenty five percent (25%) is reached or the sales tax, interest and penalties are paid in full.

6.50.085 Information to be Confidential. The following information shall be made available to the public: the name and address of current business license holders; whether a business license holder is more than thirty days delinquent in filing returns and remitting sales tax; and if so delinquent, ~~the amount or estimated amount of sales tax due and the number of returns not filed.~~

6.50.100 Collection Upon Sale. The tax shall constitute a part of such price and shall be a debt from the buyer to the seller until paid and shall be recoverable at law in the same manner as other debts. In addition, as set forth in section 6.50.060 the sales tax payable on the sale of designated intangible personal property may be assumed or absorbed by the seller, if the seller of the designated intangible personal property so chooses.

6.50.140 Public Statement of Tax Required- Exception for Coin-Operated Machines. The revenue from a coin-operated machine shall be treated in gross on a monthly basis, without reference to the amount paid or played on a particular transaction. In addition, as set forth in 6.50.060 the sales tax payable on the sale of designated intangible personal property may be assumed or absorbed by the seller, if the seller of the designated intangible personal property so chooses

6.50.170 Estimated Tax.

(A) In the event that the City is unable to ascertain the tax due to be remitted by a seller by reason of the failure of the seller to keep accurate books, to allow inspection, failure to file a return or falsification of records, the City may make an estimate of the tax due based on any information available to it. Notice of the estimate of taxes due shall be furnished the seller (see section 6.50.180 below) and the amount therein stated shall become ~~final for the purposes of determining liability of the seller to the City in thirty days~~ pursuant to the procedure set forth below under Sub-Section 6.50.180, unless the seller earlier files an accurate return, supported by satisfactory records, indicating a lesser liability. A seller shall immediately notify the City of any fire, theft or other casualty which would prevent complying with this chapter. Such casualty constitutes a defense to any penalty provided in this chapter, but does not excuse the seller from liability for taxes due. Accidental loss of funds or records is not a defense under this section.

6.50.180 - Delinquent Taxes - Notice.

(A) Whenever the City reasonably believes a return contains inaccurate reporting or whenever any seller has become delinquent in the submission of the required monthly return or in remitting sales taxes, the City shall mail to the delinquent seller's last known address a written demand by certified mail, return receipt requested, for submission of the corrected required sales tax return and remittance of the tax payable within ten days. In the event of noncompliance with such demand, the City may make a sales tax assessment against the delinquent seller, the assessment to be based on an estimate of the gross taxable revenue received by the seller during the monthly period in question. See Sub-Section 6.50.170, above. A

copy of the assessment shall be sent to the seller at his last known address by certified mail, return receipt requested. The seller shall have a right to a hearing before a representative of the City at which time the seller shall make available for examination the books, papers, records and other documents pertaining to the sales and revenue for the period involved in the assessment. The seller may exercise his right to a hearing by delivering to the City within 15 days of the date of notice was mailed, a written request for a hearing. The City shall establish a date and time for a hearing to be held within ten days of receipt of the request unless a later time is mutually agreeable. The person conducting the hearing shall issue an amended assessment if he/she determines an amendment should be made. The amended assessment, or the original assessment if no amendment is made within five days of the hearing, shall be the final assessment 30 days after the mailing of the notice of the original assessment unless the seller has submitted an accurate return within that same 30 days.

(B) The City may file a civil action for collection of any taxes, penalty or interest due before or after making a demand or assessment under Subsection (A) to this section. Alternatively or in addition to a civil action, the city may record a lien for the amount of the sales tax assessment, as set forth below.

C) Whenever any seller fails to submit the required monthly return or remit taxes after notice given as provided in Subsection (A) of this Section, the City may require such Seller to submit returns and remit taxes on a more frequent basis.

6.50.190 - Delinquent Taxes - Appeal.

A seller may appeal a decision of the City under 6.50.170-6.50.180 to the Mayor or his/her designee in accordance with the provisions of this section.

(A) The seller has the right to a hearing before the Mayor or his/her designee.

(B) The seller's request for a hearing must be in writing, signed by the seller (or counsel of the seller) and delivered to the Mayor's office within 30 days of receipt of the final assessment of delinquency as provided for in 6.50.180 (A) . Pursuant to Section 6.50.170 and/or 6.50.180 seller's failure to request a hearing within the time and manner provided shall be deemed a waiver of his or her appeal rights and to any appellate review to which he or she might have otherwise been entitled and in such event the City's decision becomes final.

(C) If the seller duly delivers his or her request for hearing, the Mayor or his/her designee will hold a hearing within 15 days from date of receipt of the request. The Mayor or his/her designee may extend in writing the hearing date, but no extension of more than 30 days shall be granted. The Mayor or his/her designee shall duly notify the seller of the date, time and place of the hearing.

(D) The seller at his or her own expense, may be represented by counsel.

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

F) All testimony shall be under oath. The proceedings shall be tape recorded. Upon written request, the seller is entitled to a copy of the tape at no charge. The seller or representative may examine and cross-examine witnesses. The Mayor or his/her designee may also question witnesses. Exhibits may be introduced. The Alaska 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 Mayor or his/her designee may continue the hearing for good cause.

(G) The order of presentation will be:

- (1) Brief opening statement by the city;
- (2) Brief opening statement by the seller, which is optional;
- (3) Presentation of evidence by City;
- (4) Presentation of evidence by seller;
- (5) Rebuttal as necessary;
- (6) Argument by City;
- (7) Argument by Seller;
- (8) Rebuttal argument by City;

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

(I) Within ten working days from the conclusion of the hearing, the Mayor or his/her designee shall render a written decision which shall be effective immediately or according to its terms.

J) A seller who is dissatisfied with the Mayor or his/her designees decision may appeal it to the superior court in Palmer only. The appeal must be filed within 30 days of the seller's receipt of the decision. The seller's failure to appeal within this time constitutes a waiver of his/her appeal rights and the Mayor or his/her designees decision becomes final.

6.50.200 Lien for Tax, Interest and Penalty.

(A) The tax, interest, penalties and administrative costs imposed under this chapter shall constitute (pursuant to the procedures set forth herein) a lien in favor of the City upon the assets, including all real and personal property, of every seller failing to report and/or remit taxes on taxable sales within the City. The lien arises upon recordation of an assessment of delinquency and continues until the liability for the amount is satisfied or the property of the delinquent person is sold at foreclosure sale. When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special improvement 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 liens for which claims of lien under A.S. 34.35.070 or notices of right to lien under A.S. 34.35.064 have been recorded before the recording of the sales tax lien.

(B) The City may file a notice of lien in the procedural manner provided for federal tax liens under A.S. 40.19.010-40.19.050, provided that, in addition to the rights afforded thereunder, the City's sales tax lien shall attach to all seller's personal property, whether tangible or intangible, located in the recording district in which the lien is filed regardless of where the seller resides. The City may record subsequent notices of lien for amounts due after the recording of a previous notice of lien. The City may also record amended notices of lien to correct any errors or to provide notice of the then current principal amount owing.

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

- (1) The name of the seller;
- (2) The principal amount owing at a stated date;
- (3) A statement that penalty, interest and administration costs are also owing.

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

6.50.210- Delinquent Taxes -- Foreclosure -- Time Limit.

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

(B) The City may, in addition to or in place of the remedies provided in this chapter, initiate civil actions to collect unpaid taxes, penalty, and interest.

6.50.220- Violations -- Remedies.

(A) If a seller who owes sales taxes to the City fails to pay them timely, whether intentionally or not, the seller shall pay the City all costs of collection, to include, without limitation, actual reasonable attorney's fees, costs and audit fees incurred, whether or not court action is commenced. This amount of fees and costs is in addition to the civil penalty set out in Subsection C of this section and in addition to the interest and penalty amounts set forth in Section 6.50.080.

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

- (1) Failure to obtain a current business license by a seller;
- (2) Making sales either without a current, valid business license or while the seller's business license is suspended;
- (3) Failure to file a tax return or failure to remit taxes when due;
- (4) Falsification or misrepresentation of any record or fact provided to the City under this chapter or required to be kept by this chapter, if used to mislead the City tax authorities;
- (5) Failure to correct a falsification or misrepresentation of any record or fact provided to the City concerning sales tax;
- (6) Failure of seller to allow the inspection at reasonable times of records required to be kept by this chapter; and
- (7) Failure of a seller to keep and preserve records required to be kept under this chapter.

(C) For continuing violations, the civil penalty for each violation of this chapter shall be \$25 per day for each violation up to a cumulative total not to exceed 10 days or \$250.00.

(D) The City may request the court to enjoin a seller from violating any provision of this chapter. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall grant the injunction.

(E) All remedies hereunder are cumulative and are in addition to those existing at law or equity.

6.50.230 Implementation. such tax levy not to be established until after January 1, 1993. In all calendar years subsequent to the first calendar year of the effective date of this Ordinance (1993), the rate of levy applicable to that calendar year shall be established by the statutory procedure generally set forth in A.S. 29.45.110 and A.S. 29.45.0240, generally calling for the rate of levy to be established before June 15th of the particular calendar year at issue and further generally providing for the property tax to be levied by calendar year and further generally providing that the rate of levy is applicable to real property assessment values effective January 1 of the calendar year at issue.

SECTION V. Effective Date. This ordinance becomes effective upon adoption by the Wasilla City Council.

Introduction: 12/13/93


Public Hearing: 01/10/94

ADOPTED by the Council of the City of Wasilla on this 14th day of February, 1994.



JOHN C. STEIN, Mayor

ATTEST:



ERLING P. NELSON, CMC
City Clerk