

Chapter 6.40 SALES AND USE TAX

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6.40.010 Definitions. *(Chapter 6.40 established by Ordinance 90-10, 8/14/90)*

For purposes of this chapter, certain words and phrases are defined as follows:

- A. "Borough" means Lake and Peninsula Borough.
- B. "Buyer" means the first person who becomes directly or indirectly obligated to a seller for payment for personal property or services or becomes obligated to another for rent, lease or similar payments for possession or use of property.
- C. "Collector" means the person involved in a sale who is required to collect the tax levied under this chapter. In the case of the sale of raw fish, it is the buyer; in all other cases it is the seller.
- D. "Person" means an individual, partnership, cooperative, association, joint venture, corporation, estate trust, business, receiver, or any entity, group or

combination acting as a unit.

- E. "Processed" or "processing" means cooking, canning, smoking, butchering, freezing, salting, dehydrating and other activities that modify the condition of the fish in preparation of the fish for sale, but does not include decapitating, gutting, gilling, sliming, or icing by the person harvesting the fish if done for the purpose of maintaining the quality of the fish until it can be sold.
- F. "Raw fish" means fin fish and shellfish and includes, but is not limited to, crabs, shrimp, scallops, clams, oysters, sea cucumbers, salmon, halibut, cod, herring, flounder and pollock that have not been processed.

(Amended by Ordinance 94-03, 4/19/94)

- G. "Sale means any sale, lease, rental, transfer or assignment of any right, title or interest in any property, and the sale or provision of any service, for valuable consideration. "Sale" is an event that occurs when a person within the borough becomes directly or indirectly obligated for the payment for the sale of property, sale or performance of services or the lease, rental or use of property, including admissions to a place or event, and, if the sale is of raw fish, without regard to whether delivery by the seller occurred directly or indirectly nor whether delivery of the fish occurred inside or outside the Borough if the fish are purchased for delivery or are delivered to a location inside the Borough at the time of sale. A sale in the Borough occurs if raw fish are purchased by a buyer and delivered to the buyer inside the Borough even if transported outside the Borough prior to processing. "Sale" also includes the performance of services within the borough without regard to the place of sale of such services, and includes an event that occurs when a person within the Borough becomes directly or indirectly obligated to sell or convey property within the Borough, or to perform services within the Borough or to lease or rent to or permit the use of property within the Borough by another, including admissions to a place or event.
- H. "Sale price" means the total consideration, whether money, credit, rights or other property, paid, delivered or given by the buyer, expressed in terms of money and, in the case of a sale involving an exchange of property, service or other rights, the fair market value of the property, service or other rights exchanged, including delivery or installation costs, taxes, or any other expenses whatsoever, measured by the gross cost of the seller. It is without deduction for the cost of tangible property sold, the cost of property used, provided or consumed, the cost of labor, interest, delivery or taxes, or any other expenses whatsoever paid or accrued and without deduction on account of trade-ins, setoffs or losses. In the case of raw fish, sale price includes any indirect consideration such as fuel or supplies furnished directly or indirectly by the buyer or offsets to the cash value for gear furnished, and includes post purchase or post season adjustments or bonuses.
- I. "Sales Tax Administrator" or "Administrator" means the manager or the person designated by the manager as the sales tax administrator or the agent of the administrator.
- J. "Seller" means a person making a sale and includes every person who sells or vends property, every person renting property to another and every person who sells or performs services for a valuable consideration.
- K. "Services" does not include labor performed by an employee for an employer.

- L. "Taxpayer" means the person involved in a sale who is first required to pay the tax levied under this chapter. In the case of the sale of raw fish it is the seller; in all other cases it is the buyer.
- M. "Value of property" is the consideration, whether money, credit, rights, or other property, expressed in terms of money paid or given or contracted to be paid or given by the buyer or person who uses the property to the seller for the property, the use of which is taxable under Section 260 of this chapter. In the case of property used that is acquired under conditions wherein the purchase price does not represent the true value of the property, the value of the property used shall be determined as nearly as possible according to the selling price at the place of use of the property of like quality or character.

6.40.020 Imposition; rate.

There is levied and shall be collected a tax of two percent on all sales within the Lake and Peninsula Borough.

6.40.030 Exemptions - enumerated.

The following sales are exempt from the tax levied under this chapter:

- A. Sales to and by the United States Government, the State of Alaska and its political subdivisions.
- B. Sales to religious and charitable organizations in the conduct of their regular religious and charitable functions and activities upon presentation of an exemption certificate issued by the Borough. Regular religious and charitable functions and activities are those functions and activities of the religious or charitable organization that are exempt from income taxation under section 501 of the federal Internal Revenue Code.
- C. Sales that may not be taxed under the constitution or laws of the State of Alaska or the United States.
- D. Sales of property except raw fish.
- E. Lease, rental or use of property not otherwise taxable as a service.
- F. The sale or performance of a service.
- G. Casual and isolated sales not made in the regular course of business.
- H. The resale of raw fish in essentially the same form as when purchased if the tax under this chapter paid on the prior purchase was at fair market value for the fish under the circumstances of the prior purchase.

6.40.040 Application for exemption.

- A. No exemption certificate may be granted except under written application for the exemption on a form provided by the Borough.

- B. The Borough may at any time require proof, in the form it considers necessary, of the grounds for the exemption and the amount of the exemption claimed under this section. The claimant shall have the burden of establishing his or her qualifications for an exemption, and the exemption laws and cases shall be strictly construed in favor of taxation.

6.40.050 Tax - computation.

The tax due under this chapter shall be computed by multiplying the sale price by two percent. The tax due on a sale shall be rounded to the nearest whole cent with fractions of one half cent and more rounded upward.

6.40.060 Statement of tax.

A person required to collect a tax under this chapter shall provide the taxpayer with a statement of the amount of tax owing on any taxable transaction and shall retain a copy of such statement for a period of not less than five (5) years following the due date of the payment to the Borough.

6.40.070 Obligation to pay tax.

- A. The obligation of the tax is upon the buyer, except that in the case of the sale of raw fish the tax is upon the seller. Except for the sale of raw fish, the seller shall collect the tax on all sales at the time of the sale. With respect to the sale of raw fish, the buyer shall segregate from funds of the buyer an amount equal to the tax due on the sale. Funds required to be segregated under this section are taxes collected or required to be collected under this chapter. With respect to the tax on services performed within the Borough, but not sold within the Borough, the sales tax shall be paid when payment for the services is made.
- B. Collection is enforceable by the seller or, in the case of raw fish, by the buyer, as a certified tax collector of the Borough, provided, however, that this shall not limit the liability of the person liable for the tax.

6.40.080 Determination of taxability - Liability for errors.

The collector shall determine whether a sale is taxable under this chapter. If the collector fails to collect the tax due on a sale because of an incorrect determination of taxability by the collector or for any other reason, the collector becomes liable to the Borough for the tax in the same manner as if the tax had been collected.

6.40.090 Tax funds held in trust.

All tax monies collected or segregated or required to be collected or segregated by the collector are funds of the Borough and shall be held in trust by the collector in a fund or account separate from all other funds and accounts of the collector until paid over to the Borough. Interest earned on such funds while held by the collector may be retained by the collector as compensation for segregating and protecting the funds of the Borough.

6.40.100 Location of sales made and services provided.

- A. A sale of property or a sale of services occurs within the Borough when either party to the sale is within the Borough when the sale is either negotiated or occurs. With respect to the sale of property, the sale occurs within the Borough when the property that is the subject of the sale is within the Borough when the sale is negotiated or occurs, regardless of the location of the parties. For purposes of a party that is not an individual, the location of the party is determined by the location of the individual who acts on behalf of the party when negotiating, closing, or executing the sale.
- B. When the use tax arises on raw fish under Section 6.40.240 (C) because the raw fish caught or harvested within the Borough is transported by a person who intends to sell the fish to a buyer outside of the Borough, the buyer is deemed to be located within the Borough for purposes of the sale, and is required to collect the tax in the same manner as a buyer under Section 6.40.070. Such buyers are required to register with the Borough under Section 6.40.110 and are subject to the filing procedures and requirements set forth in this chapter.

6.40.110 Registration of sellers and buyers as tax collectors - Certification of registration.

- A. All sellers, except sellers of raw fish, and all buyers of raw fish shall file with the Borough an application for a certificate of registration on a form prescribed by the Borough not more than ten (10) days after the date of commencing business within the Borough, or the opening of an additional place of business, provided no registration is required if the business conducted does not require the person to collect a tax under this chapter. The application must contain or be accompanied by:
 - 1. the name and mailing address of the applicant;
 - 2. the location at which the applicant will conduct its business and where transactions subject to the tax under this chapter will occur; if the applicant's business is to be conducted from one or more vessels, the name of the vessels and the general location or areas in which each vessel will operate;
 - 3. if the applicant is a buyer of raw fish,
 - a. the applicant's Alaska Fisheries Business License number;
 - b. a copy of the applicant's most recent Alaska Fisheries Business License Tax filing;
 - c. a copy of the most recent statement provided the state of the amount of fisheries products the person expects to produce during the applicant's license year;
 - 4. the applicant's Alaska Business License number;
 - 5. a statement of the extent of property owned by the applicant in the Borough against which the tax liability of the applicant may be collected and other information with respect to description, location and value of the property which

the Borough prescribes.

- B. Upon receipt of a properly executed application, the sales tax administrator will issue a certificate of registration setting out the name of the registrant, its physical and its mailing addresses, and the place the registrant will be operating from a vessel. The certificate shall authorize the registrant to collect and enforce the collection of the tax required to be collected under this chapter. The certificate must be prominently displayed at the location set out in the certificate or upon the vessel named in the certificate. A separate certificate shall be issued for each vessel or location of an applicant.
- C. A certificate of registration is non-assignable and non-transferable and must be surrendered to the sales tax administrator by the registrant to whom it is issued upon the registrant's ceasing to do business at the location or on the vessel named therein. If the business is continued at the same location, but there is a change in its form or organization such as a change of a single proprietorship to a partnership or corporation, or the admission or withdrawal of a partner, or other change, the registrant shall surrender the old certificate to the sales tax administrator with an application for a new certificate. If the business of a registrant is sold, leased or in any other manner transferred to another person, the registrant shall surrender the certificate to the sales tax administrator and the new owner, lessee or other successor to the business shall immediately apply for a new certificate.
- D. If there is a change in location of a registrant's place of business, the registrant shall surrender the certificate for the old location to the sales tax administrator along with a statement of the new address. Upon receipt of the old certificate and the new address, the sales tax administrator shall issue a new certificate of registration showing the new location.
- E. Before issuing a certificate of registration, the applicant may be required to post a bond, furnish a statement of net worth, or furnish such additional security as may be required by the sales tax administrator to insure full and prompt payment of taxes required to be collected under this chapter. *(Amended by Ordinance 94-05, 5/17/94) (Regulations adopted by Resolution 99-08 5/18/99)*
- F. A person applying for a certificate of registration under this section thereby gives consent to an inspection by the Borough of the applicant's Alaska Fisheries Business Tax returns and other information or records filed by the registrant with the State of Alaska for the purpose of enforcement and administration of the provisions of this chapter.

6.40.120 Rulings and regulations.

- A. The manager may promulgate and amend regulations and may prescribe the use of forms appropriate to the implementation of this chapter. Regulations promulgated by the manager are effective on the date they are promulgated unless a different date is indicated in the regulations; provided, all regulations are subject to repeal or revision by the Assembly at any time. Prior to promulgation, proposed regulations shall be submitted to the borough attorney for review and comment. Upon promulgating a regulation or any amendment to an existing regulation, the manager shall submit the regulation or amendment to the Assembly at its next regular meeting.
- B. If any person who is or may be required to pay or collect a tax under this chapter questions the application of this chapter to a transaction or other situation in which that person is involved or may become involved, the person may apply to the sales tax

administrator for a ruling on the question. The sales tax administrator may rule on the question and may seek the advice of the borough attorney on the question. Before a ruling of the sales tax administrator is effective or binding on the borough, it must be signed by the manager. Rulings having general applicability shall be considered by the manager for promulgation as a regulation.

6.40.130 Payment and remittance - Application of payments - Deduction.

- A. Taxes required to be collected under this chapter during a calendar year are due and payable to the Borough within 30 days of the last day of the calendar quarter. Every collector shall file with the borough on forms furnished by the Borough a return containing the following information:
1. Gross sales by the collector during the calendar quarter;
 2. nontaxable sales during the calendar quarter;
 3. taxable sales during the calendar quarter;
 4. taxes collected on taxable purchases;
 5. interest, penalties, deductions and such other information as may be required on the form.

(amended by Ordinance 92-16, 3/17/92)

- B. The return shall be signed and its completeness and accuracy sworn to by the collector under penalty of perjury.
- C. All sales are presumed to be taxable. An exemption claimed for any sale must be proved or adequately explained by the collector with the submission of the return.
- D. The completed return, together with the remittance of the tax required to be collected during the calendar quarter, must be received by the Borough at the address designated on the return form within 30 days of the last day of every calendar quarter.

(amended by Ordinance 92-16, 3/17/92)

- E. Any collector who was required to collect a tax during a calendar quarter shall file a return for the next following calendar quarter even though no tax may be due during the following quarter. A return filed for a quarter in which no tax was required to be collected must show why no tax was collected or is due. If the business is sold or transferred to another, whether voluntarily or involuntarily, the person filing the return shall provide on the form the name of the person to whom the business was sold or transferred. A person who files a return for a calendar quarter in which no taxes were required to be collected is not required to file additional returns until the person is again required to collect a tax under this chapter.
- F. If a complete return accompanied by the entire tax due and all interest and penalties is received by the Borough within the time allowed, the buyer may deduct and retain two percent (2%) of the tax due as compensation for its costs of administration of the tax; provided, the amount deducted and retained may not exceed \$200.
- G. Amounts received with the return shall be applied in the following order:
1. Penalties due, beginning with the oldest penalty;
 2. interest due, beginning with the interest due on the oldest quarter; and

3. taxes due, beginning with the taxes due from the oldest quarter.

6.40.140 Penalties and interest.

- A. A person who fails to file a return as required under this chapter or who fails to remit all the taxes due the Borough by that person shall pay a penalty of five percent (5%) of the taxes due with a minimum penalty of \$100 if no return is filed. The penalty is imposed for each month or part of a month during which the delinquency of failure to file exists up to a maximum of twenty-five percent (25%); provided, the total penalty for a single calendar quarter shall not exceed three thousand dollars (\$3000). The filing of an incomplete return shall be treated as the filing of no return.
- B. Interest at the rate of twelve percent (12%) per annum shall be paid on all amounts due the Borough that are not received by the Borough as required under this chapter except interest does not accrue on penalties.
- C. A person who fails to apply for a certificate of registration as required by this chapter shall pay a penalty of two hundred dollars (\$200). Such penalty must be paid before the license is issued if the original license was issued before the determination that a penalty was due. A person who fails to apply for a certificate of registration, who engages in taxable transactions after being informed in writing that a certificate of registration is required, shall pay a penalty of four hundred dollars (\$400) before the license is issued or before a renewal or amended license is issued if the original license was issued before the determination that a penalty was due.
- D. A person required to collect a tax under this chapter who fails to provide a written statement setting out the amount of the tax due on the transaction shall pay a penalty to the Borough equal to the amount of the tax due on the sale.
- E. A failure of or refusal of a person required to collect a tax under this chapter to produce records or allow inspection at such reasonable times as requested or demanded by the sales tax administrator shall pay to the Borough a penalty equal to three times any deficiency found or estimated to have occurred by the sales tax administrator; provided, the minimum penalty payment is three thousand dollars (\$3000).
- F. A person required to maintain records under the provisions of this chapter shall immediately notify the Borough of any fire, theft or other casualty that would prevent the person from complying with the provisions of this chapter. Such casualty is a defense to a civil penalty levied under subsection E. of this section, but does not excuse the person from the liability for payment to the Borough of taxes required to be collected. Accidental or unexplained loss of funds or records does not excuse a person from the performance of any of the requirements under this chapter.

6.40.150 Forced filing.

- A. If a collector under this chapter fails to file a complete and accurate return or to pay over all the taxes due as required by this chapter, the sales tax administrator may make an estimate of the taxes due based upon any information available. The administrator shall file a return for such collector and shall provide a copy of the return to the collector with a request that the collector file a correct return along with payment of the taxes due. The administrator may require the collector filing the return to provide sufficient

information to support the corrected return. If the collector has not filed a correct return satisfactory to the administrator, along with the taxes due, within thirty (30) days of the date of mailing of the forced filing, the amount of any deficiency remaining unpaid on the forced filing is presumed correct and is delinquent from the date originally due; provided, if upon a subsequent audit or inspection of the records of the collector, it is determined that a greater amount was due, the collector shall be liable for payment of such additional amount. A forced filing may be made if the Borough is unable to ascertain the tax due to be remitted by a collector by reason of the failure of the collector to keep accurate records or to allow inspections of the collector's records, or of the collector's falsification of records.

- B. A collector who disagrees with the determination of the administrator shown on the force filed return and refuses to file a corrected return may, within thirty (30) days of the date of mailing of the forced filing, appeal the ruling of the administrator as set out in section 210. A collector who files a corrected return under this section, but who is notified in writing by the administrator that taxes are due in excess of those admitted by the collector may appeal the ruling of the administrator as set out in section 210 but only if appealed within ten (10) days of the date of mailing of the notice from the administrator. Notice of the appeal must be received by the administrator within the time provided herein and be accompanied by payment under protest of the taxes, interest and penalty claimed by the administrator to be due.

6.40.160 Records - Investigation and audits.

- A. Every person required to collect the tax imposed under this chapter shall maintain, keep and preserve such records, books and accounts of all sales made by the person as may be necessary to determine the amount of tax the person is obligated to collect and pay over to the Borough. Such records, books and accounts shall be preserved for a period of five (5) years following the date all taxes involved in the accounting period were required to be paid to the Borough.
- B. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the sales tax administrator may conduct investigations, hearings and audits and to that end may examine any relevant books, papers, memoranda, records or other writings of any seller or buyer and may require the attendance and sworn testimony of any seller or buyer or any officer or employee of the seller or buyer at a hearing. Upon written demand by the sales tax administrator, a buyer or seller shall make available to the sales tax administrator in the office of the sales tax administrator such books, papers, memoranda, records and other written material as may be set out in the demand unless the sales tax administrator and the person upon whom the demand is made agree to presentation of such materials at a different place.

6.40.170 Liens.

- A. The tax, interest, penalties and other costs due and owing under this chapter shall constitute a lien in favor of the Borough upon the property and other assets of the collectors and taxpayers liable for the payment of the tax, interest, penalties and other costs.
- B. The lien imposed by this section arises and attaches at the time the collector purchases fish from the selling fishermen and continues until the entire amount due has been paid.
(Amended by Ordinance 94-05, 5/17/94)

- C. If delinquent sales taxes, including interest and penalties, are not paid within ten (10) days from the mailing of notice and demand for payment thereof, a notice of lien may be recorded in the appropriate district recorder's office, and upon recordation, a lien arising under this section has priority over any other liens except those for special assessments or those granted priority by state or federal law.
- D. An action to foreclose the lien created by this section shall be commenced and pursued in the manner provided for the foreclosure of liens in AS 09.45.170 - 09.45.220.
- E. The remedy provided in this section is not exclusive and shall be in addition to all other remedies available to collect the taxes, penalties, interests and costs due under this chapter.
- F. The failure to record a lien does not constitute a waiver or abrogation of any priorities, rights or interests of the Borough at law and in equity.
- G. Fees for the administrative costs of filing notices of liens and releasing of liens shall be:
 - 1. Filing of notices of lien: twenty-five dollars (\$25), plus recorder's office filing fee.
 - 2. Release of liens: twenty-five dollars (\$25), plus recorder's office filing fee.
- H. Upon full satisfaction of payment of all taxes, interest, penalties and costs due and owing to the Borough, the administrator shall file a certificate discharging the lien.

6.40.180 Accelerated returns.

A person who is required to file a return and pay taxes to the Borough who fails for more than thirty (30) days to file a return or pay the taxes due or who has, within a twelve (12) month period, filed or paid taxes late on two or more occasions may be required by the sales tax administrator to file and pay on a monthly basis; provided, the sales tax administrator shall provide to the person a hearing after reasonable notice of sales tax administrator's intention to require more frequent filing and payment. The person required to file and pay on a monthly basis who fails to file and pay the full amount due within ten (10) days of the date required to such filing and payment or such a person who files late two or more times during a four month period may be required by the sales tax administrator to file on a weekly or more frequent basis after written notice of intent and a hearing as provided in this section.

6.40.190 Termination, sale or transfer of retail business.

- A. A collector whose interest or substantial part thereof in a business registered or required to be registered under this chapter is sold, leased, assigned, or otherwise transferred either voluntarily or involuntarily to another person shall make a final sales tax return within twenty (20) days after the date of such transfer. The purchaser or other person acquiring the business shall withhold a portion of the purchase or lease money sufficient to pay any sales tax, interest and penalties which may be due, unless the seller displays a receipt from the sales tax administrator showing that all tax obligations imposed by this chapter, to the date of the sale, transfer or assignment have been paid in full. Before any such sale or transfer is completed, the buyer and seller shall send to the sales tax administrator, by registered first-class mail, postage prepaid, a copy of the notice referred to in A.S. 45.05.522, which statute is hereby made a part hereof, and said notice shall be so sent regardless of whether such notice would have otherwise have been required to

have been made and sent under the other provisions of AS 45.05.510, et seq., Uniform Commercial Code--Bulk Transfers. Following receipt of said notice the Lake and Peninsula Borough shall have ninety (90) days in which to perform a final sales tax audit and assess sales tax liability against either the seller or purchaser of the business. Any purchaser, lessee, transferee, assignee or other successor-in-interest of a business who fails to provide the sales tax administrator with the notice required by this subsection shall be liable jointly and severally with the collector for such taxes, penalties and interest owed by the collector to the Borough.

- B. A person who terminates his business without the benefit of a purchaser, lessee, successor or assign, shall make a final tax return and settlement of tax obligations within fifteen (15) days after such termination.
- C. Any person who has filed a sales tax return shall be presumed to be making sales in succeeding quarters unless he or she files a subsequent return declaring the termination or transfer of the business.

6.40.200 Personal liability of corporate officers.

- A. At the time that a corporate business becomes delinquent in paying the collected taxes, or fails to collect taxes and remit them to the Borough as required by this Chapter, any officer or other person having control or supervision of sales tax funds collected and held in trust or who is charged with the responsibility for the filing of returns or the payment of sales tax funds collected, segregated and held in trust, shall be personally liable for any unpaid taxes and interest and penalties due from the corporation. For the purposes of this section, any sales taxes that have been paid to the Borough but not collected shall be deductible from the sales taxes collected or required to be collected but not paid. *(Amended by Ordinance 94-05, 5/17/94)*
- B. The officer or other person shall be liable only for taxes collected or required to be collected or which became due and payable to the Borough during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection A. of this section, plus interest and penalties on those taxes.
- C. This section does not relieve the corporation of its liability for payment of the tax due under this chapter or otherwise impair other tax collection remedies afforded by law.
- D. Collection authority and procedures prescribed in this chapter apply to collections under this section.

6.40.210 Protest of tax by taxpayer.

- A. If a taxpayer believes that a transaction is exempt or otherwise not subject to the tax imposed under this chapter, but the collector has determined the transaction to be subject to the tax, the taxpayer shall pay the tax to the collector under protest. A tax is paid under protest by stating to the collector that the tax is paid under protest and requesting the collector mark any sales slips, receipts, vouchers and other evidence of the sale to indicate that the tax is paid under protest. The taxpayer shall file with the collector and with the sales tax administrator a statement of protest on a form provided to the collector by the Borough. Failure to file a complete statement of protest with both the collector and the sales tax administrator within thirty (30) days of the date of the sale or to pay the tax constitutes a waiver of the protest and of any other right of the taxpayer

to challenge the tax in any other forum. The taxpayer shall clearly set out on the form the terms and conditions of the sale, the amount of the sale, the quantity of fish, other property, or services involved, the location of the sale or other transaction or the place of the performance of the rental or services, and all other information necessary to determine whether the tax does or does not apply. The form shall include the names and mailing addresses of both the taxpayer and the collector and any other party involved in the transaction and must be signed by the taxpayer.

- B. Upon receipt of a written protest, the collector shall forward the protest to the sales tax administrator along with any additional statements the collector believes may assist the sales tax administrator in determining the protest. Unless the collector records on the taxpayer's statement of protest facts different from those recorded by the taxpayer on the statement, forwarding the statement to the Borough by the collector constitutes a confirmation by the collector of the facts set out on the statement to the extent the collector has knowledge of such facts. The written protest must be forwarded to the sales tax administrator as promptly as possible, and in any case not later than thirty (30) days after delivery of the protest to the collector.
- C. The sales tax administrator shall issue a written ruling on each protest within thirty (30) days of receipt of the protest from the collector or on such later date as may be required to insure full consideration of the issues raised in the protest. The burden of proof is on the taxpayer. The sales tax administrator may seek the advice of the borough attorney on any protest. The ruling will be in writing and must set forth the reason for the grant or denial of the protest. The ruling will be sent to the collector and the taxpayer at the addresses given on the protest.
- D. If a protest is granted, the sales tax administrator shall determine whether the tax protested has been received by the Borough from the collector. If the tax has been received, the sales tax administrator shall refund directly to the taxpayer the amount of the tax to be refunded. If the tax has not been received by the Borough, the collector shall be instructed to refund to the taxpayer the appropriate amount if the collector has actually collected the tax from the taxpayer. If the challenged tax was upon the sale of raw fish, and the collector has not yet paid for the fish, the collector shall make such adjustment as necessary to the accounts of the taxpayer to reflect the correct amount of the tax due. The collector and the taxpayer may make other arrangements for crediting to the taxpayer the amount of the refund if the collector and the taxpayer reach a mutual agreement as to such alternate procedure.
- E. In the event a protest is denied, the taxpayer may, within thirty (30) days of the date of mailing of the notice of denial, appeal the denial to the manager if the manager is not acting as the sales tax administrator. The manager shall receive such additional information, whether written or oral, as the protesting taxpayer may desire to present. The manager may also receive such additional testimony as the sales tax administrator may present. The manager shall render a decision in writing and give notice of the decision to both the taxpayer and the collector. The decision of the manager, whether acting as the manager or as the sales tax administrator, is final and is subject to judicial review on appeal of the superior court under the applicable appellate court rules.
- F. Failure to file an appeal or protest as authorized under this section within the time permitted constitutes a waiver of the appeal or protest and of any other right of the taxpayer to challenge the tax, interest, penalty or other charge directly or collaterally in any other forum.

6.40.220 Protest of tax by collector.

- A. If a collector believes that a transaction is exempt or otherwise not subject to the tax imposed under this chapter or believes that a penalty, interest or other charge is not owing but has been informed by the Borough that such transaction is subject to the tax imposed under this chapter or such penalty, interest or charge is owing, the collector may protest the tax by paying the tax owed to the Borough on or before the date due and filing with the Borough at the time of payment a statement of protest setting out all relevant facts and clearly explaining why the transaction taxed or the penalty, interest or charge made is exempt, not otherwise subject to the tax levied under this chapter or not owing. The payment and statement of protest must be received by the Borough not later than the thirtieth (30)th day following the date the tax was required to be collected from the taxpayer; or, if no tax was collected, the later of the occurrence of the challenged transaction or the date of the notice from the Borough that the transaction is taxable; or, if the protest is of a disallowance, charge levied, or similar action by the Borough, the date of the notice to the collector of the Borough determination. Failure to file a statement of protest and to pay the amount claimed by the Borough as owing within the time permitted under this subsection or other section of this chapter constitutes a waiver of the right to protest to the Manager or to appeal or otherwise challenge the tax, charge or determination in any judicial or other proceeding.
- B. The sales tax administrator shall issue a written ruling on each collector protest within thirty (30) days of receipt of the protest or on such later date as may be required to insure full consideration of the issues raised in the protest. The collector has the burden of proof. The sales tax administrator may permit or require the collector to provide additional information relevant to the protest. The sales tax administrator may seek the advice of the borough attorney on any protest. The ruling on the protest must set forth the reason for the grant or denial of the protest. The ruling will be sent to the collector at the address given on the protest.
- C. If a protest is granted, the sales tax administrator shall refund to the collector the penalty, interest or charge levied or the tax collected and paid over to the Borough that was on an exempt transaction or otherwise not subject to the tax levied or the interest, penalty or charge under this chapter. The collector shall immediately refund to each taxpayer from whom the tax was collected the amount of the tax improperly collected; provided, if the collector has failed to directly or indirectly collect the tax but has paid the tax to the Borough from its own account, the collector may retain the tax refund.
- D. In the event a protest is denied, the collector may, within thirty (30) days of the date of the notice of denial, appeal the denial to the manager if the manager was not acting as the sales tax administrator on the protest. The manager shall receive such additional information whether written or oral, as the collector may desire to present. The manager may also receive such additional testimony and material as the sales tax administrator may present. The manager shall render a decision in writing and give notice of the decision of the collector. The decision of the manager, whether acting as the manager or as the sales tax administrator, is final and is subject to judicial review by an appeal to the superior court under applicable appellate court rules.
- E. Failure to file an appeal or protest as authorized under this section within the time permitted constitutes a waiver of the appeal or protest and any other rights of the collector to challenge the tax, interest, penalty, or other charge directly or collaterally.

6.40.230 Refund of excess payment.

- A. A taxpayer or collector who, through a clerical or similar error, pays a tax under this chapter that exceeds the amount actually due may receive a refund of the excess payment upon meeting the conditions set out in this section 230.
- B. A taxpayer who has made an excess sales tax payment as set out in subsection A. shall be given a refund of the excess by the collector if the taxpayer
 - 1. notifies the collector of the excess payment;
 - 2. proves to the collector that an excess payment was made; and
 - 3. provides such notification and proof to the collector prior to the date the collector pays over to the Borough the taxes collected during the reporting period in which the claimed excess payment was made.
- C. A taxpayer who has made an excess sales tax payment as set out in subsection A. who has been denied a refund by the collector, or who did not meet the requirements of subsection B.3. or who has made an excess use tax payment may file with the sales tax administrator for a refund of the excess payment. The taxpayer must file the request for the refund and satisfactory proof of entitlement with the administrator not later than the last business day of the calendar quarter following the quarter during which the claimed excess payment was made. The manager may establish a reasonable fee for processing refund requests under this subsection.
- D. A collector who has made an excess tax payment as set out in subsection A. shall be given a refund of the excess if the administrator receives written notices from the collector of the amount claimed as an excess payment. The administrator must receive the notice and satisfactory proof of the excess payment, in the form required by the administrator, not later than the last day upon which the collector may file a tax return under this chapter for the quarter following the quarter for which the claimed excess payment was made.
- E. Upon approval of a refund to a collector, the borough may pay the refund to the collector or authorize the collector to take the refund as a credit against future quarterly tax payments; provided, the amount taken as a credit in any one quarter may not exceed thirty percent (30%) of the taxes otherwise due from the collector for the quarter. No interest may be paid on the excess payment.
- F. A claim for a refund of an excess payment to which this section 230 applies is forever barred if notice and proof of the excess payment are not given within the time required.

6.40.240 Disposition of tax information.

Information in the possession of the Borough which was obtained by the Borough from a collector or taxpayer in the administration or enforcement of the provisions of this chapter and which discloses the particulars of the business or affairs of a collector or taxpayer or other person that is not otherwise public information is not a matter of public record. The information shall be kept confidential except when its production is required in an official borough, state or United States investigation, law enforcement action, or court proceeding. These restrictions do not prohibit the publication of tax lists showing the names of taxpayers or delinquent taxes. Information otherwise protected by this section may be furnished on a reciprocal basis to other agencies of the state or the United States concerned with the enforcement of tax laws.

6.40.250 Time extensions.

For good cause shown, the sales tax administrator may grant an extension of the time required for the performance of any act under this chapter. The extension shall be subject to such terms and conditions as the administrator finds appropriate. An application for an extension must be filed in writing before the date required for performance.

6.40.260 Use tax levied.

- A. There is levied and shall be collected a use tax equal to the sales tax set out in Section 6.40.020 on the processing, storage, consumption, transportation, or other use of property within the Borough if such property has not been the subject of a transaction otherwise taxable under this chapter had the acquisition by the user been a purchase within the Borough. The tax shall be levied and collected in an amount equal to the rate of levy times the value of the property used.
- B. A credit shall be allowed against the tax imposed by this section in an amount that the present user, the user's agent, bailer or donor has paid a sales or use tax with respect to such property in any other state or political subdivision prior to the use of the property in the Borough. The person who processes, stores, consumes, transports, or otherwise uses property subject to taxation under this section is liable for the payment of the tax to the Borough and shall file a return, obtain a certificate of registration, and remit the taxes due in the same manner and subject to the same requirements for reporting, payment, interest, penalties, inspection of records, enforcement, administration and other applicable provisions of this chapter as are set out for the taxation of sales.
- C. Under this section, the act of transporting property within the Borough shall only be considered a taxable use when the property being transported is raw fish caught or harvested within the Borough by a person who intends to sell the fish to a buyer, irrespective of whether the buyer is located within the Borough, and irrespective of whether the person transporting such raw fish has an agreement or obligation to sell the raw fish to any particular buyer at the time the transporting of the fish within the Borough occurs.
(Amended by Ordinance 99-04 June 11, 1999)

6.40.270 Authority to contract collection.

The manager may, with the consent of the Assembly, contract with a city or a private person to collect the taxes imposed by this chapter.

6.40.280 Enforcement.

- A. If sales tax is not paid when due, the Borough may enforce the payment of the tax, interest and any penalties by any method available in law, including but not limited to the lien and sale of property of the collector or taxpayer and a personal action against the delinquent collector or taxpayer.
- B. For the violation of any provision of this chapter the Borough may bring an action for civil penalties and for any violation or threatened violation an action for injunctive relief. An action for injunctive relief may be brought notwithstanding the availability of any other remedy. Upon an application for injunctive relief and a finding of violation or threatened violation of a provision of this chapter, the superior court shall grant the injunction.

- C. Each day that a violation continues is a separate violation.
- D. For the violation of any provision of this chapter the Borough may bring a criminal action without regard to whether any civil remedy is available or has been sought or obtained.

6.40.290 Violation - Criminal enforcement.

- A. Violation of any of the requirements of this chapter is a misdemeanor. For convictions of a violation of a provision of this chapter, a fine of not to exceed five hundred dollars (\$500) may be imposed; except, for a subsequent violation of any provisions of this chapter, whether similar to or different from the prior conviction, the maximum penalty that may be imposed is a fine of one thousand dollars (\$1000) or imprisonment for not to exceed thirty (30) days, or both, if the subsequent conviction is for a violation that occurred after, but within three years of the conviction for the prior violation.
- B. Each day upon which a violation of this chapter continues is a separate offense.
- C. The Borough may recover taxes, interest, civil penalties and other amounts due in a civil action independent of or in addition to any criminal action filed.