

**PETERSBURG BOROUGH
ORDINANCE # 2014-17**

**AN ORDINANCE AMENDING THE BOROUGH CODE BY PROVIDING FOR A NEW
CHAPTER 4.35, TO IMPOSE AN EXCISE TAX ON CIGARETTES AND OTHER
TOBACCO PRODUCTS, AND DIRECTING THAT THE AMENDMENT BE
SUBMITTED TO THE VOTERS OF THE BOROUGH**

Section 1. Classification: This ordinance is of a permanent nature and the amendment set out herein shall be codified in the Petersburg Borough Code upon ratification by the voters of the Borough.

Section 2. Purpose: The purpose of this ordinance is to amend the Borough code to implement a new Chapter 4.35 to introduce an areawide excise tax on cigarettes and other tobacco products brought into the Borough for sale, and to direct that the amendment be submitted to the voters of the borough for ratification.

Section 3. Substantive Provisions: The Petersburg Borough Municipal Code shall be amended to add a new Chapter 4.35, to read as follows:

Chapter 4.35, Excise Tax on Cigarettes and Other Tobacco Products

Sections:

- 4.35.010 - Applicability of chapter.
- 4.35.020 - Definitions.
- 4.35.030 - Imposition of excise tax on cigarettes and other tobacco products
- 4.35.040 - Intent and purpose of this chapter.
- 4.35.050 - Exemptions.
- 4.35.060 - Registration
- 4.35.070 - Monthly Returns – Personal Liability
- 4.35.080 - Involuntary returns and estimated tax
- 4.35.090 - Amended tax returns
- 4.35.100 - Prohibited Acts and Penalties for violations
- 4.35.110 - Tax Lien
- 4.35.120 - Inspection and maintenance of documents and records.
- 4.35.130 - Administrative regulations.
- 4.35.140 - Administrative appeals.

4.35.010 - Applicability of chapter.

Unless provided otherwise, this chapter shall apply to the taxation of all cigarettes and other tobacco products brought or transported into the Petersburg Borough to be sold inside the Petersburg Borough.

4.35.020 - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. "Cigarette" means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than pure or nearly pure tobacco. A pack of cigarettes is a rectangular container, mostly of paperboard, which generally contains 20 cigarettes. .
- B. "Department" means the finance department of the Petersburg Borough.
- C. "Distributor" means a person who brings or transports cigarettes or other tobacco products, or causes them to be brought or transported, into the Petersburg Borough for the purposes of sale, or for distribution to others for resale, within the Borough.
- D. "Other tobacco product" means and includes:
 - 1. A cigar;
 - 2. A cheroot;
 - 3. A stogie;
 - 4. A perique;
 - 5. Snuff and snuff flour;
 - 6. Smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;
 - 7. Chewing tobacco, including cavendish, twist, plug, scrap, and tobacco suitable for chewing;
 - 8. A vapor product; and
 - 9. An article or product made wholly or in part of tobacco or a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption.

Other tobacco product excludes a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose.

- E. "Person" is as defined in section 1.04.030 of this code, and is specifically intended to include individuals who are employees, members, directors, agents or officers of any of the such entities who are under a duty to perform an act concerning which a violation of this chapter could occur. It is the intent of this chapter that such persons be personally liable for unremitted taxes, interest, penalties and administrative fees and costs.

- F. "Sale" means a sale, barter, exchange, and every other manner of transferring the ownership of personal property.
- G. "Vapor product" means any vapor cartridge or other similar container which contains nicotine in a solution or other form that is intended to be used with an electronic cigarette or similar vapor producing devise. It also includes an electronic cigarette kit when the kit contains vapor cartridge(s) and a disposable electronic cigarette or similar devise sold for one time use.
- H. "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a distributor or other person, after deduction of a discount or other reduction received by the distributor for quantity or cash.

4.35.030 - Imposition of excise tax on cigarettes and other tobacco products

A. The Petersburg Borough hereby levies an excise tax of \$2.00, adjusted annually as provided in subsection B of this section, on each pack of cigarettes brought or transported into the Petersburg Borough after December 31, 2014.

B. The annual Consumer Price Index adjustment shall be based on the August release date of the semiannual report for the Municipality of Anchorage from the United States Department of Labor Statistics and determined to be the percent change to the current year from the average of the first and second halves of the prior year, and shall be effective January 1st of each year following the August release date. The first such adjustment date shall be January 1, 2016.

C. The Petersburg Borough hereby levies an excise tax of 45 percent of the wholesale price on other tobacco products, other than cigarettes, brought or transported into the Petersburg Borough after December 31, 2014.

4.35.040 - Intent and purpose of this chapter.

It is the intent and purpose of this chapter to provide for the collection of the excise tax from the distributor who first brings or transports, or causes to be brought or transported, cigarettes or other tobacco products into the Petersburg Borough. The excise tax is levied when a distributor brings or transports, or causes to be brought or transported, cigarettes or other tobacco products into the Petersburg Borough from outside the Petersburg Borough.

4.35.050 - Exemptions.

The tax imposed under this chapter does not apply to:

- A. Cigarettes or other tobacco products brought or transported into the Petersburg Borough by an exchange, commissary, or ship's store operated by one of the uniformed services of the United States as defined in Section 5 USC 2101, if the

cigarettes and other tobacco products are sold to and for the sole use of authorized personnel according to current military regulations.

- B. Cigarettes or other tobacco products if the United States Constitution, the Alaska Constitution, or other federal or state laws prohibit the levying of the tax on the product by the Petersburg Borough.

4.35.060- Registration.

- A. No person may sell, purchase, possess, bring or transport cigarettes or other tobacco products into the Petersburg Borough as a distributor without first registering with the Petersburg Borough, and obtaining a certificate of registration. The registration shall be on a form provided by the department and must include the information requested by the department. Registration constitutes the person's consent to the Borough's filing of a lien under section .110 of this chapter on the person's real and personal property for delinquent taxes and related interest, penalties and administrative fees and costs.
- B. The registration required by this chapter is in addition to any other registration or license required by law.
- C. The nonrefundable fee for registration or renewal is \$25.00. A certificate is subject to renewal every five years.
- D. A distributor shall display the certificate of registration prominently at the distributor's place of business. A certificate of registration is not assignable or transferable.
- E. The department may suspend or revoke a certificate of registration if a distributor fails to comply with the provisions of this chapter.
- F. Any appeal from the department's failure to issue or renew a certificate of registration, or the department's suspension or revocation of a certificate, must be filed within 30 days of the date of mailing of the department's notification to the distributor,

4.35.070 - Monthly returns – Personal Liability.

- A. Each distributor shall, on or before the last day of each month, complete, sign under penalty of perjury, and transmit to the department an excise tax return for the preceding month. The return shall be upon forms provided by the department, and shall be accompanied by payment for the taxes due for that preceding month. The return must include, for that preceding month, a total count of the number of packs of cigarettes and the wholesale price of all other tobacco products brought into the Petersburg Borough, the amount of excise tax due, a count of the packs of cigarettes and the wholesale price of all other tobacco

products for which an exemption is claimed, and such other information and supporting documentation as the Petersburg Borough may require.

- B. A tax return must be filed even if there were no cigarettes or other tobacco products brought or transported into the Petersburg Borough during that preceding month.
- C. The taxes imposed under this chapter and the return required by this section must be received by the department or postmarked on or before the last day of each calendar month following the month covered by the return. If the last day of the month falls on a weekend or holiday, the return must be received or postmarked on or before the next business day.
- D. Any payment submitted to the department for taxes, penalties, interest or administrative fees and costs due under any provision of this chapter shall be applied to the most delinquent excise tax return in the following order: first, to unpaid administrative fees and costs; second, to unpaid penalties; third, to unpaid interest; and fourth, to the unpaid taxes,
- E. Any director, officer, employee, agent or member of a corporation, limited liability company, partnership or other business entity having, on behalf of the entity, control over or supervision of, or charged with the responsibility for, obtaining a certificate of registration under section .060, remitting the tax or the filing of tax returns, or maintaining and producing records under section .120, is personally liable for any uncollected and/or unpaid taxes, penalties, interest and administrative costs and fees due the borough. Dissolution, sale or other transfer of the business entity does not discharge this liability.

4.35.080 - Involuntary returns and estimated tax.

If a distributor fails to file a return as required by this chapter, or when the department finds that a return contains inaccurate reporting or is not supported by the records to be maintained pursuant to this chapter, the department may prepare and file a return on behalf of the distributor. Involuntary returns filed under this section may be premised upon any information that is available to the department, including, among other things, comparative data for similar businesses. The department shall mail to the distributor's last known address the borough's estimated tax assessment and a written demand for submission of the corrected or required excise tax return and payment within 15 days. Unless the distributor timely files an accurate excise tax return covering the time period subject to the borough's estimate, or files an appeal under section .140 within thirty days of the date of mailing of the borough's estimated assessment, the borough's estimate shall become final for the purpose of determining the distributor's tax liability. A distributor for whom an involuntary return is filed under this section shall be subject to liability for the tax stated in the return, as well as subject to the penalties and interest provided for in this chapter. The return prepared by the department is, prima facie, good and sufficient for all legal purposes. However, nothing prevents the distributor from

presenting evidence on an appeal to rebut the presumed sufficiency of a return prepared by the department, nor does the presumption of sufficiency alter the parties' respective burdens of proof once the distributor has presented evidence to rebut that presumption. If a distributor files a return or an appeal in response to an estimated tax assessment, the distributor shall, in addition to any other requirements of this chapter, provide to the department the books, records, accounts and other documents pertaining to the period involved in the estimated assessment.

4.35.090 - Amended tax returns.

Any tax return filed hereunder may be amended by the distributor within one year after the due date of the tax return being amended. No amendment by the distributor shall be allowed after this one year period..

4.35.100 - Prohibited Acts and Penalties for violations.

- A. In addition to other prohibited acts specified in this chapter, a person shall not:
 - 1. conduct activities under this chapter as a distributor without a valid certificate of registration;
 - 2. fail or refuse to timely file any return, regardless of whether tax is due;
 - 3. fail to timely pay any tax due; or
 - 4. fail to maintain records, produce records upon request, or cooperate with a department audit or investigation, under section .120.
- B.. In the event tax is not timely paid, a penalty of eight percent of the unpaid tax shall be assessed and an additional penalty of eight percent of the unpaid tax shall be added for each additional month or part of a month of delinquency up to a maximum penalty of thirty-two percent of the unpaid tax. In addition, a distributor shall pay any administrative fees or costs, attorney fees, and other costs and fees incurred by the borough in connection with any collection, or attempted collection, of any unpaid tax, interest or penalties under this chapter.
- C. Interest shall accrue on the unpaid taxes due at a rate of ten and one-half percent annually from the date of delinquency until paid. Penalties, administrative costs and fees, and interest shall be collected in the same manner as the tax.
- D. A person who commits an act prohibited by or in violation of this chapter, including those set out in A(1) through A(4) above shall be subject to a civil penalty of not more than \$500.00 to be imposed by the department, in addition to any other relief to which the Borough would be entitled. Each day that a prohibited act or violation continues constitutes a separate act subject to a penalty. An appeal from a penalty imposed hereunder must be filed within 30 days of the date notice of said penalty was mailed or delivered to the person.
- E. The Borough may file a civil action for collection of any tax, penalty, interest or administrative fee or cost due under this chapter.

- F. For good cause shown, the borough finance director may waive or reduce all or a portion of any penalty imposed under this chapter.

4.35.110 - Tax lien.

- A. The tax, interest and penalties imposed by this chapter, and the administrative costs under subsection F of this section, shall constitute a lien in favor of the borough upon all of the real and personal property of every person owing the tax.
- B. The lien imposed by this section arises and attaches at such time as payment becomes delinquent and continues until the entire amount is satisfied.
- C. If delinquent taxes, including interest and penalties, are not paid within ten days from a mailing of notice and demand for payment, a notice of lien may be recorded in the office of the district recorder and upon recordation a lien arising under this section has priority over any other liens, except: 1) those for property taxes and special assessments; 2) those that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien; and 3) mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the tax lien.
- D. An action to foreclose a lien created by this section shall be commenced and pursued in the manner provided for foreclosure of liens under state law.
- E. The remedy provided in this section is not exclusive and shall be in addition to all other remedies available to the borough to collect the taxes, penalties and interest due under this chapter.
- F. Fees for the administrative costs of filing notice of liens, and releasing liens shall be:
 - 1. Filing of notices of lien: fifty dollars plus recorder's filing fee;
 - 2. Release of liens: fifty dollars plus recorder's filing fee.

4.35.120 - Inspection and maintenance of documents and records.

- A. In order to facilitate the administration and enforcement of the provisions of this chapter, each distributor shall maintain and keep for a period of three years all of the monthly excise tax returns, reports, forms and other records prescribed by this chapter or as prescribed hereafter by the department. The department is specifically authorized and empowered to investigate or audit any return, and to examine and inspect at all reasonable hours the books, records and other documents of any distributor, including the distributor's state business license, in order to carry out the provisions of this chapter. At least one week notice would be given to the business being inspected.
- B. A distributor shall keep complete and accurate written and/or electronic books, records, and accounts, showing all inventory purchases and distribution

of cigarettes and other tobacco products within the borough, for a period of three years from the date of each sale or distribution, including but not limited to: all local, state, and federal tax reports and forms; all inventory, shipping, and accounting records; all sales receipts; and all documentary evidence supporting any exemption provided under this chapter. Upon request of the department, a distributor shall produce such books, records, accounts and other documents at the offices of the department.

- C. Information relating to the amount of taxes due from any distributor, and documents obtained from a distributor relating to any inspection, investigation or audit, shall be held confidential and shall be kept from public inspection except when the distributor has failed to comply with the provisions of this chapter. Nothing contained in this section, however, shall be construed to prohibit the delivery to a distributor, or the distributor's duly authorized representative, of a copy of any return or report filed by the distributor nor to prohibit the publication of statistics so classified as to prevent the identification of particular distributors or their customers, nor to prohibit the furnishing of information on a reciprocal basis to other agencies of the borough, of the State of Alaska, or the United States, which agencies are concerned with the enforcement of tax laws.

4.35.130 - Administrative regulations.

The department shall take all lawful and necessary actions to administer this chapter. The finance director, or his or her designee, may adopt regulations providing for the application and interpretation of this chapter and providing procedures, methods and forms for reporting and collecting the tax imposed by this chapter.

4.35.140 – Administrative appeals.

A. Appeals under this chapter shall be made in writing to the Borough Manager, on forms provided by the borough. The Manager may appoint a hearing officer to hear the appeal in place of the Manager. As soon as practicable after receiving the written appeal, the date, time and place for the hearing of the appeal shall be determined. Such date shall be not less than ten days nor more than thirty days from the date the appeal was filed. Written notice of the hearing shall be given to the appellant, either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at appellant's address shown on the appeal.

B. Failure of a person to file an appeal in accordance with the provisions of this chapter shall constitute a waiver of that person's right to the hearing and of any adjudication of the action appealed from. Only those matters or issues specifically raised by the appellant shall be considered in the hearing on the appeal. If the appellant fails to appear at the hearing, the Manager or hearing officer shall issue a decision without taking evidence from the appellant, unless

reasonable cause is shown for failure to appear within seven days after the date of the hearing.

C. The hearing shall be conducted informally, and may be governed by such rules and procedures as the Manager or hearing officer may choose. At the hearing, the appellant may appear in person or by agent or attorney, and offer documents and testimony, of appellant or other witnesses, in support of the appeal. The department shall appear at the hearing and may offer documents and testimony in support of the action which is the subject of the appeal. The appellant and department personnel may cross-examine witnesses, under reasonable time limits adopted by the Manager or hearing officer. Oaths may be administered, and a record shall be kept of the proceedings. The Manager or hearing officer may require production of potentially relevant documents.

D. A written final decision on the appeal shall be issued within 15 days of the hearing, including findings of fact. The decision shall be provided to the appellant, either by causing a copy to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at appellant's address shown on the appeal.

E. The final decision of the Borough Manager or hearing officer may be appealed to the Superior Court, First Judicial District, State of Alaska, within 30 days of the date the decision was issued and in accordance with applicable Court Rules. For purposes of this section, the date of issuance is the date upon which the decision was mailed or delivered to the appellant.

Section 4. Severability: If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected.

Section 5. Submission to Voters:

A. In accordance with section 12.02 of the Borough Charter, the Borough Clerk shall submit this ordinance, as a single proposition, to the voters of the borough at the next regular election to be held on October 7, 2014.

B. The proposition to be submitted to the voters shall read substantially as follows:

Proposition #7

Authorizing an Ordinance to Levy and Collect an Excise Tax on all Cigarettes and Other Tobacco Products Brought into the Borough for Sale.

Shall Ordinance #2014-17, providing for a wholesale excise tax of \$2.00 per pack of cigarettes, plus an annual Consumer Price Index adjustment, and 45% of the wholesale price on other tobacco products, brought into the Borough for sale, be ratified (approved) by the voters?

- ☐ Yes
- ☐ No

Section 6 Effective Date: The new chapter 4.35 set forth in this ordinance, if ratified (approved) by the majority of the qualified voters of the borough voting on the question, shall become effective January 1, 2015.

Passed and approved by the Petersburg Borough Assembly, Petersburg, Alaska this _____ day of July, 2014.

Mark Jensen, Mayor

ATTEST:

Kathy O'Rear, Clerk

Adopted:
Published:
Effective: Upon Adoption