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Reviewed by: Assembly Counsel

For reading: March 23, 2010

ANCHORAGE, ALASKA

AO NO. 2010-29

1 AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING TITLE
2 12 OF THE ANCHORAGE CODE TO PROVIDE FOR THE LEVY OF AN EXCISE TAX
3 ON SOFT DRINKS WITHIN THE MUNICIPALITY AND ESTABLISHING PENALTIES;
4 AMENDING TITLE 10, BUSINESS LICENSES AND REGULATIONS; PROVIDING
5 FOR THE ESTABLISHMENT OF AN OBESITY PREVENTION PROGRAM; AND
6 PROVIDING FOR THE EFFECTIVE DATES.

7
8 THE ANCHORAGE ASSEMBLY ORDAINS:

9
10 **Section 1.** Anchorage Municipal Code title 12, Taxation, is hereby amended by
11 adding a new chapter to read as follows:

12
13 **Chapter 12.XX EXCISE TAX ON SOFT DRINKS**

14
15 **12.XX.005 Applicability of chapter.**

16
17 Unless provided otherwise, this chapter shall apply to the taxation of all soft drink
18 products brought into or acquired in the municipality.

19
20 **12.XX.006 Definitions.**

21
22 The following words, terms and phrases, when used in this chapter, shall have
23 the meanings ascribed to them in this section, except where the context clearly
24 indicates a different meaning:

25
26 *Bottle* means any closed or sealed glass, metal, paper or plastic container
27 or any other type of container regardless of the composition, size or shape.

28
29 *Bottled soft drink* means any ready-to-consume soft drink contained in a
30 bottle.

31
32 *Brought into or acquired* includes all manners, ways and modes of
33 bringing into or obtaining soft drink products in the municipality.

34
35 *Buyer* means a person who brings into or acquires in the municipality soft
36 drink products for his own consumption from any source other than a
37 manufacturer, distributor, direct-buying retailer or retailer.

38
39 *Cardholder or exemption cardholder* means a person in whose name a
40 valid and current exemption card has been issued by the department.

1 *Chief fiscal officer* means the chief fiscal officer of the municipality or his
2 designee.

3
4 *Department* means the finance department of the municipality.

5
6 *Direct-buying retailer* means a person who is engaged in the sale of the
7 soft drink products at retail in the municipality, and who brings or causes them to
8 be brought into the municipality.

9
10 *Distributor* means a person who brings soft drink products or causes them
11 to be brought into the municipality, and who sells or distributes them to others for
12 resale in the municipality.

13
14 *Exemption card* means a municipal soft drink products exemption card
15 issued under Section 12.XX.030.

16
17 *Inventory count* means the effective date and details of a count by
18 description, including the trade name and brand, purchase price and total
19 quantity on-hand of all soft drink products. Detail must be subtotaled and
20 distinguished between soft drink products which are taxable and soft drink
21 products which were acquired exempt of the municipal excise tax under this
22 chapter.

23
24 *Licensee* means a person licensed under Section 12.XX.035.

25
26 *Manufacturer* means a person who makes, fashions or produces soft
27 drink products for sale to distributors or other persons within the municipality.

28
29 *Natural fruit juice* means the original liquid resulting from the pressing of
30 fruit, the liquid resulting from the reconstitution of fruit juice concentrate or the
31 liquid resulting from the restoration of water to dehydrated fruit juice.

32
33 *Natural vegetable juice* means the original liquid resulting from the
34 pressing of one or more vegetables, the liquid resulting from the reconstitution of
35 vegetable juice concentrate or the liquid resulting from the restoration of water to
36 dehydrated vegetable juice.

37
38 *Non-caloric sweetener* means any non-nutritive sweetener used as a
39 sugar substitute and includes aspartame, saccharin, neotame, sucralose,
40 stevioside, acesulfame potassium, alitame, and other sugar-substitute
41 sweeteners except those deriving from fruit juice, used in the preparation of soft
42 drinks.

43
44 *Nonalcoholic beverage* means any beverage that is not included in the
45 definition of "Beverage" under the Federal Alcohol Administration Act.

1 *Person* includes an individual, company, partnership, joint venture, joint
2 agreement, association (mutual or otherwise), corporation, estate, trust, business
3 trust, receiver or trustee, syndicate, or political subdivision of this state, or
4 combination acting as a unit including individuals who are employees or officers
5 of any of the such entities who are under a duty to perform an act concerning
6 which a violation of this chapter could occur. It is the intent of this chapter that
7 such persons be personally liable for unremitted taxes.
8

9 *Place of business* means a place where soft drink products are sold, or
10 where they are brought or kept for the purpose of sale or consumption, including
11 a vessel, vehicle, airplane or train.
12

13 *Purchase* means the acquisition of ownership or possession of soft drink
14 products from any source.
15

16 *Record* means a group of logically related fields of information concerning
17 events effecting an organization, which is an integral part of an accounting
18 information system, where separate, identifiable transaction data is entered as
19 historical data.
20

21 *Retail* means a sale to a consumer or to any person for any purpose other
22 than for resale.
23

24 *Retailer* means a person in the municipality who is engaged in the
25 business of selling soft drink products at retail.
26

27 *Sale* includes a sale, barter, exchange and every other manner of
28 transferring the ownership of personal property.
29

30 *Simple syrup* means a mixture of sugar and water.
31

32 *Soft drink* means any nonalcoholic beverage, whether carbonated or
33 noncarbonated, sold for human consumption, that contains 5 grams or more of
34 added sugar or other caloric sweeteners or any amount of non-caloric sweetener
35 per 12 ounces, including but not limited to, soda, water, sports drinks, "energy"
36 drinks, colas and any flavored drinks, any diluted fruit or vegetable drink
37 containing seventy percent (70%) or less of natural fruit juice or natural vegetable
38 juice, any frozen, freeze-dried or other concentrate to which water is added to
39 produce a nonalcoholic beverage containing less than seventy percent (70%)
40 natural fruit juice or natural vegetable juice, and coffee and tea bottled as a liquid
41 for sale.
42

43 *Soft drink product* includes the items defined as soft drinks, simple syrup,
44 and syrup under this section.

1 *Syrup* means the liquid mixture of basic ingredients used in making,
2 mixing or compounding soft drinks by mixing the syrup with water, simple syrup,
3 ice, fruits, vegetables, fruit juice, vegetable juice or any other product suitable to
4 make a soft drink.

5
6 *Sugar* includes sugar (sucrose), dextrose (glucose), fructose, corn syrup,
7 high-fructose corn syrup, honey, or other caloric sweeteners, except those
8 deriving from fruit juice, used in the preparation of soft drinks.

9
10 *Tax* means the soft drink products excise tax assessed pursuant to this
11 chapter.

12
13 *Tax return* means the monthly report to be submitted to the department
14 as required by Section 12.XX.090.

15
16 *Vending machine operator* means a person who brings or causes soft
17 drink products to be brought into the municipality and who owns or operates a
18 vending machine that dispenses soft drinks, whether the vending machine is
19 installed on the person's own premises or installed elsewhere.

20
21 (Cross references: Definitions and rules of construction generally, § 1.05.020.

22
23 **12.XX.010 Tax on soft drink products.**

- 24
25 A. The municipality hereby levies an excise tax of **100** mills, adjusted
26 annually as provided in subsection C of this section, on each soft drink
27 brought into the municipality after _____, 20__.
- 28
29 B. The municipality hereby levies an excise tax of **75** mills, adjusted annually
30 as provided in subsection C of this section, per gallon of syrup or simple
31 syrup brought into the municipality after _____, 20__.
- 32
33 C. The annual Consumer Price Index adjustment shall be based on the
34 August release date of the semiannual report for the municipality from the
35 U.S. Department of Labor statistics and determined to be the percent
36 change to the current year from the average of the first and second half of
37 the prior year, and will be effective January 1 of each year following the
38 August release date. The first such adjustment date shall be January 1,
39 201__.
- 40
41 D. Soft drink products upon which the tax is imposed are not again subject to
42 the tax when acquired by another person.
43

12.XX.021 **Intent and purpose of chapter and taxpayer.**

- A. It is the intent and purpose of this chapter to collect the tax from the person who:
1. First acquires the soft drink product within the municipality;
 2. Brings, or causes soft drink product to be brought into the municipality;
 3. Makes, manufactures, or fabricates soft drink products in the municipality; or
 4. Ships or transports soft drink products into the municipality.

Anything to the contrary contained in this chapter notwithstanding, the taxpayer shall be those persons described in this section and no others.

12.XX.025 **Exemptions.**

- A. **Military.** Soft drink products brought into or acquired in the municipality by a military exchange, commissary, or ship's store operated by one of the uniformed services of the United States as defined in 5 USC section 2101 are exempt from tax under this chapter if the Soft drink products are sold to and for the sole use of authorized personnel according to current military regulations.
1. Soft drink products brought into or acquired in the municipality by a military exchange, commissary, or ship store and sold to, or for the use of unauthorized personnel are not exempt from the tax under this chapter.
 2. Soft drink products brought into or acquired in the municipality by an independent contractor and sold to consumers within the military installations are not exempt from the tax under this chapter.
 3. A person claiming an exemption under this section for the sale of Soft drink products directly to a military exchange, commissary, or ship's store operated by one of the uniformed services of the United States shall file, with a tax return under Section 12.XX.090 a certification on a form provided by the department for each exempt sale claimed under this section. The certification shall be in the form of an affidavit, and must be signed by an authorized agent of the military exchange, commissary, or ship's store. The certification shall contain a statement that the Soft drink products purchased will

1 be sold solely to and for the use of authorized personnel in
2 accordance with military regulations. The invoice supporting the
3 sale to the military exchange, commissary, or ship's store must
4 accompany the certification.
5

- 6 4. If the department determines that soft drink products sold under the
7 exemption provided in this subsection were available for the use or
8 purchase by unauthorized personnel, the department will assess
9 the tax under this chapter to the person making the sale.
10

11 B. The tax imposed under this chapter does not apply to soft drink products if
12 the United States Constitution or other federal laws prohibit the levying of
13 this tax on such products by the municipality.
14

15 C. Provided all persons otherwise subject to this chapter comply with its
16 requirements, soft drink products:

- 17
18 1. Brought into or acquired in the municipality;
19
20 2. Transported outside of the municipality; and
21
22 3. Which are for resale outside the municipality by a merchant with an
23 Alaska business license and municipal exemption card;
24

25 are exempt from the tax imposed under this chapter.
26

27 **12.XX.030 Exemption cards.**
28

29 A. Except as otherwise provided herein, no person may acquire soft drink
30 products in the municipality exempt of the tax unless that person has been
31 issued an exemption card in accordance with this chapter. No licensee
32 shall claim any exemption under this chapter unless soft drink products for
33 which an exemption is claimed have been sold or transferred to a person
34 presenting a valid and current exemption card issued by the department in
35 accordance with this chapter prior to such sale or transfer.
36

- 37 1. Any person with an active physical business presence within the
38 Municipality of Anchorage, including a licensee, may apply for an
39 exemption card under this section as an agent for merchants
40 whose principal places of business are located outside of the
41 Municipality and who acquire from an agent soft drink products
42 exempt from the tax imposed under this chapter, provided each
43 merchant has a valid State of Alaska business license.
44

- 1 2. A merchant acquiring soft drink products through an agent under
2 this section shall be considered an exemption cardholder for all
3 purposes under this chapter.
4
- 5 3. A person or licensee issued an exemption card as an agent under
6 this section shall comply with all provisions of this chapter except
7 the agent shall not be required to maintain records to prove that
8 soft drink products for which an exemption is claimed under the
9 agent's exemption card have been resold outside of the
10 Municipality by the merchant. Violation of any provision of this
11 chapter relating to exemption cardholders by a licensee as agent
12 for a merchant shall be grounds for revocation of the licensee's
13 license issued under this chapter.
14
- 15 4. Notwithstanding anything to the contrary contained in or implied by
16 other provisions of this chapter, the licensee shall be and remain
17 the taxpayer liable for the payment of taxes due under this chapter.
18
- 19 B. Application for an exemption card is restricted to persons with an active
20 physical business presence within the Municipality of Anchorage acting as
21 an agent for merchants whose principal places of business are located
22 outside of the municipality, shall be on a form provided by the department,
23 and shall include the following information and such other information as
24 the department may require:
25
- 26 1. The applicant's name and address;
27
- 28 2. A copy of the applicant's current State of Alaska business license;
29
- 30 3. The merchant names and locations where soft drink products will
31 be sold;
32
- 33 4. Each application for an exemption card shall be accompanied by a
34 fee of \$50.00.
35
- 36 C. All exemption cardholders must maintain a valid, current business license
37 issued by the State of Alaska.
38
- 39 D. Each exemption card, unless suspended or revoked by the department, is
40 valid from its date of issue until the end of that calendar year and may be
41 renewed each year upon application and payment of the fee to the
42 department.
43
- 44 E. The department may suspend, revoke or refuse to issue an exemption
45 card under this section for any violation of or failure to comply with the

1 requirements of this chapter by agent or cardholder, including any act or
2 omission by such person which withholds, misstates or provides false or
3 misleading information required by the department.
4

5 **12.XX.035 License required for dealers in soft drink products; issuance.**
6

- 7 A. No person may sell, purchase, possess or acquire soft drink products in
8 the municipality as a manufacturer, distributor, direct-buying retailer,
9 vending machine operator or buyer without a license issued under this
10 chapter.
11
- 12 B. The department, upon application and payment of the fee, shall issue a
13 license to each manufacturer, distributor, direct-buying retailer, vending
14 machine operator or buyer. The application must include the following
15 information:
16
- 17 1. The applicant's name and address;
 - 18 2. The name under which the soft drink products business will be
19 conducted;
 - 20 3. The applicant's soft drink products business categories as a
21 manufacturer, distributor, direct-buying retailer, vending machine
22 operator or buyer;
 - 23 4. In the case of vending machine operator, the number of vending
24 machines which will be operated; and
25
 - 26 5. Other information required on the department's application form.
27
- 28
- 29 C. The department may refuse to issue a license if there is reasonable cause
30 to believe that the applicant has willfully withheld information requested to
31 determine the applicant's eligibility to receive a license, or if there is
32 reasonable cause to believe that information submitted in the application
33 is false or misleading and is not made in good faith.
34
- 35 D. A license required by this chapter is in addition to any other license
36 required by law.
37
- 38 E. A license issued under this chapter shall include:
39
- 40 1. The name and address of the licensee;
 - 41 2. The type of business to be conducted;
 - 42
 - 43
 - 44
 - 45

3. The address at which the business is conducted; and
4. The years for which the license is issued.

12.XX.040 License fee.

For each license issued under this chapter, and for each renewal, the fee is \$100.00.

12.XX.050 Expiration and renewal of licenses.

A license issued under Section 12.XX.030 expires on December 31. A licensee, on application to the department accompanied by the renewal fee, may, before the expiration of the license, renew the license for two years from the expiration date of the license. If the licensee moves the business to another location within the municipality, the licensee shall, upon application to the department, be reissued a license for the new location for the balance of the unexpired term. A person whose license is lost, stolen or defaced shall immediately file an application with the department for reissuance of the license for the balance of the unexpired term.

12.XX.060 Transfer of license.

A license issued under this chapter is not assignable or transferable. However, in the case of death, bankruptcy, receivership or incompetency of the licensee, or if the business of the licensee is transferred to another person by operation of law, the department may in its discretion extend the license for a limited time to the executor, administrator, trustee or receiver, or the transferee of the licensee.

12.XX.070 Refund of tax or license fee.

- A. The department shall not refund the license fee paid pursuant to this chapter upon the surrender or revocation of a license after the beginning of the license year. Upon application, the department will refund a license fee that is paid or collected in error.
- B. If a remittance by a licensee exceeds the amount due, and the department, on audit of the account in question, is satisfied that this is the case, the department shall, upon written request of the licensee, refund the excess to the licensee without interest.
- C. Any claim for refund filed more than one year after the due date of the tax is forever barred.

12.XX.080 Display of license; surrender of license; suspension or revocation of license.

- 1 A. A license issued under this chapter must be prominently displayed at the
2 licensee's place of business.
- 3 B. A licensee shall surrender a license within ten days after:
- 4
- 5 1. A revocation of a license;
- 6
- 7 2. A cessation of business;
- 8
- 9 3. A change of ownership of; or
- 10
- 11 4. A change of a place of business.
- 12
- 13 C. The department may suspend or revoke a license issued under this
14 chapter:
- 15
- 16 1. For violation of this chapter or a regulation of the municipality
17 adopted pursuant to this chapter; or
- 18
- 19 2. If a licensee ceases to act in the capacity for which the license was
20 issued.
- 21

22 No person whose license is suspended or revoked shall sell soft drink products
23 or permit soft drink products to be sold during the period of the suspension or
24 revocation on the premises occupied or controlled by that person. No disciplinary
25 proceeding or action is barred or abated by the expiration, transfer, surrender,
26 renewal or extension of a license issued under Section 12.XX.030.

27

28 **12.XX.090 Tax returns.**

29

30 On or before the last day of each calendar month a licensee shall submit to the
31 department a tax return, upon forms provided by the department, for each
32 license, and submit payment for the taxes due.

33

- 34 A. The return shall be signed under penalty of perjury by the licensee or his
35 agent and must include:
- 36
- 37 1. The name and address of the licensee.
- 38
- 39 2. The name and address of the person filing the return, if different
40 from the licensee.
- 41
- 42 3. The number of the license issued under Section 12.XX.035.
- 43
- 44 4. The name under which the soft drink business is being conducted.

- 1 5. The number of soft drinks manufactured, brought into or acquired in
2 the municipality during the preceding month from any source
3 whatever.
- 4
- 5 6. The names of persons from whom soft drink products were brought
6 into or acquired in the municipality during the preceding month from
7 any source whatever.
- 8
- 9 7. The number of soft drink s brought into or acquired in the
10 municipality from each person named in subsection A.7. of this
11 section.
- 12
- 13 8. Deductions claimed for the number of soft drink products for which
14 exemptions are claimed under this chapter.
- 15
- 16 9. Deductions claimed for the number of soft drink products specified
17 in the return in response to subsections A.5. and A.6. of this
18 section, for which the tax has been paid previously by another
19 person.
- 20
- 21 10. The amount of tax due on the nonexempt soft drinks manufactured,
22 brought into or acquired in the municipality during the preceding
23 month.
- 24
- 25 11. Other information and supporting documentation which may be
26 required by the department with the return.
- 27
- 28 B. Each licensee shall report the soft drink product sales for which an
29 exemption is claimed under Section 12.XX.025C. as a deduction on its
30 monthly tax return to the department and shall provide a copy of an
31 invoice or other document satisfactory to the department supporting each
32 sale to a cardholder.
- 33
- 34 C. A tax return must be filed even if there were no soft drink products
35 manufactured, brought into or acquired in the municipality during the
36 preceding month.
- 37
- 38 D. The taxes imposed under this chapter and the return required by this
39 section must be received by the department or postmarked on or before
40 the last day of each calendar month following the month covered by the
41 return.
- 42

1 **12.XX.100** **Involuntary returns.**
2

3 If a licensee fails to file a return as required by Section 12.XX.090, or when the
4 department finds that a return is not supported by the records to be maintained
5 pursuant to Section 12.XX.220, the department may prepare and file a return on
6 behalf of the licensee. Involuntary returns filed under this section may be
7 premised upon any information that is available to the department, including,
8 among other things, comparative data for similar businesses. A licensee for
9 whom an involuntary return is filed under this section shall be subject to liability
10 for the tax stated in the return, as well as subject to the penalties and interest
11 provided for in this chapter. A return prepared by the department is, prima facie,
12 good and sufficient for all legal purposes. However, nothing prevents the licensee
13 from presenting evidence on an appeal under Section 12.XX.170 in order to
14 rebut the presumed sufficiency of a return prepared by the department, nor does
15 the presumption of sufficiency alter the parties' respective burdens of proof once
16 the licensee has presented evidence to rebut that presumption.
17

18 **12.XX.110** **Amended tax returns.**
19

- 20 A. Any tax return filed under Section 12.XX.090 may be amended by the
21 licensee.
22
23 B. Any tax return prepared and filed by the department on behalf of the
24 licensee under Section 12.XX.100 may be amended by the licensee within
25 one year of the date filed by the department. No amendment by the
26 licensee shall be allowed after this one-year period.
27

28 **12.XX.120** **Application of payments.**
29

30 Any payment submitted to the department for any taxes, penalties, interest or
31 costs due under any provision of this chapter or any return or any finding or
32 determination by the department under this chapter shall be credited to the
33 monthly tax period for which remitted first to the payment of costs and then to
34 penalties, interest and taxes in that order.
35

36 **12.XX.130** **Prohibited acts and penalties.**
37

- 38 A. The importation, sale, transfer, or acquisition of soft drink products in
39 violation of this chapter is prohibited. Participation in the importation into
40 the municipality or in the sale, transfer or acquisition within the
41 municipality of soft drink products in violation of or without complying with
42 the provisions of this chapter.
43
44 B. A penalty of six percent of the taxes due shall be incurred automatically
45 when a person fails to pay the full amount of the tax due under this

1 chapter within seven calendar days following its due date. An additional
2 penalty of six percent of the taxes due shall be incurred automatically
3 when a person fails to file a tax return or report within seven calendar days
4 following its due date under this chapter. If a person fails to pay the full
5 amount of the tax due and/or file a tax return or report required under this
6 chapter within 16 calendar days after its due date, the six percent
7 penalties incurred above shall be increased automatically to 15 percent.
8

- 9 1. The penalty shall be computed on the unpaid balance of the tax
10 liability as determined by the department.
11
12 2. Notice of the penalties incurred and to be incurred shall be given to
13 the person responsible for payment of the taxes or filing the return
14 or report when such tax payment or return or report is delinquent
15 for seven calendar days after its due date.
16
17 3. The penalties provided for in this section shall be in addition to all
18 other penalties and interest provided for under this chapter.
19
20 C. If a properly filed, amended return reduces the total tax liability or the tax
21 required to be paid, or the department reduces the tax liability, the related
22 penalty will be reduced accordingly.
23
24 D. All penalties and remedies enumerated in this chapter are cumulative.
25
26 E. Unless otherwise provided in this section, any person who violates or fails
27 to comply with the provisions of this chapter shall be personally liable for
28 all costs, interest, penalties and taxes due under this chapter plus a
29 penalty equal to 30 percent of the tax due. For good cause shown, the
30 chief fiscal officer may waive or reduce all or part of any penalty imposed
31 under this subsection.
32

33 **12.XX.140 Civil fraud.**
34

- 35 A. A civil fraud penalty may be assessed against a person in addition to a
36 penalty for failure to file or failure to pay.
37
38 B. If it is determined by the department that a tax deficiency or part of a tax
39 deficiency is due to fraud, then a penalty will be added to the tax. The
40 penalty is 50 percent of the deficiency due or \$500.00, whichever is
41 greater. The penalty is computed on the total amount of the deficiency
42 due.
43
44 C. Fraud is the intentional misrepresentation of a material fact with the intent
45 to evade payment of tax which the person believed to be owing. The

1 person must have had knowledge of its falsity and intended that it be
2 acted upon or accepted as the truth.

3
4 D. To establish civil fraud, the department must prove by clear and
5 convincing evidence that:

- 6
7 1. The tax liability reported was understated; and
8
9 2. The understatement was the result of an intent to evade tax.

10
11 E. An intent to evade tax may be demonstrated by any relevant evidence,
12 including but not limited to the following:

- 13
14 1. The person has provided false explanations regarding understated
15 or omitted acquisitions of soft drink products;
16
17 2. The person has provided falsified or incomplete source documents;
18
19 3. The person has not justified an omission or understatement of a
20 significant amount of acquisitions of soft drink products; or
21
22 4. The person has substantially overstated a deduction and has failed
23 to justify the overstatement.

24
25 **12.XX.150 Tax lien.**

26
27 A. If any person who is liable to pay a tax or license fee under this chapter
28 neglects or refuses to pay the tax or licensee fee after demand, the
29 amount, including interest, additional amounts, or assessable penalty
30 together with costs, is a lien in favor of the municipality upon all property
31 and right to property, real or personal, belonging to that person.

32
33 B. The lien imposed by this section arises upon delinquency and continues
34 until the amount is paid or a judgment against the person arising out of the
35 liability is satisfied.

36
37 C. A lien arising out of a tax due under this chapter, including the penalties
38 and interest on the tax, is, subject to AS 29.45.300, a lien prior, paramount
39 and superior to all other liens, mortgages, hypothecation, conveyances
40 and assignments, upon all real and personal property of the person liable
41 for the tax and upon all the real and personal property used with the
42 permission of the owner to carry on the business which is subject to the
43 tax.
44

- 1 D. The lien on personal and real property may be enforced as provided in AS
2 29.45.300--29.45.480 for enforcement of real and personal property tax
3 liens.
4

5 **12.XX.160 Interest on unpaid tax.**
6

7 In addition to any penalties imposed by this chapter, interest at the rate of 12
8 percent per annum shall be charged on the unpaid balance of delinquent taxes.
9

10 **12.XX.170 Taxpayer, licensee, cardholder or other person remedies.**
11

- 12 A. Any person aggrieved by any action of the department in issuing,
13 suspending, revoking or refusing to issue any license or exemption card
14 under this chapter or in fixing the amount of taxes, penalties, interest or
15 costs under this chapter may apply to the department and request a
16 hearing within 30 days from the date the department mails the notice of
17 the department's action. Upon timely application under this subsection for
18 a hearing, the chief fiscal officer (the hearing officer) shall hold a hearing
19 pursuant to Chapter 3.60 to determine whether a correction is warranted.
20 Hearings before the chief fiscal officer under this subsection may, at the
21 option of the chief fiscal officer, be conducted by an administrative hearing
22 officer designated by the chief fiscal officer. If the chief fiscal officer elects
23 to refer the matter to an administrative hearing officer, the hearing officer
24 shall conduct the hearing and prepare findings and conclusions. These
25 findings and conclusions must be forwarded to the chief fiscal officer for
26 adoption, rejection or modification and issuance of a final order or decision
27 by the chief fiscal officer. An application for a hearing must notify the
28 department of the specific action complained of and amount of tax,
29 interest, cost or penalty contested and the reason it is contested. Within
30 30 days after receipt of a written decision by the department, a person
31 may appeal to the Superior Court of the Third Judicial District. The person
32 shall be given access to the department's file in the matter for preparation
33 of the appeal. If after the appeal is heard it appears that the amount due
34 was correct, the court shall confirm such amount. If incorrect, the court
35 shall determine the amount due. If the person is entitled to recover all or
36 part of the amount due or paid, the court shall order the repayment and
37 the department shall pay such amount within 14 days and attach a
38 certified copy of the judgment to the payment.
39
- 40 B. A request for appeal is filed on the date it is personally delivered, or, if
41 delivered to the department by United States mail, the date of the
42 postmark stamped on the properly addressed cover in which the request
43 is mailed. If the due date falls on a Saturday, Sunday or holiday, the due
44 date is the next working day. A current mailing address must be provided
45 to the department with the request for appeal, and any change in mailing

1 address after the request for appeal is filed must be reported to the
2 department.
3

4 C. If the notice to the person pursuant to subsection A of this section shows
5 an amount due the department, the uncontested portion of the amount
6 due must be paid within 30 days after the date of the notice. If the
7 uncontested amount is not paid within 30 days, collection action will be
8 taken on that amount even if the person has filed a request for appeal.
9 Payment of the total amount due may be made at any time before the
10 hearing. If the department has reason to believe that collection of the total
11 amount due might be jeopardized by delay, immediate payment of the
12 total amount will be demanded and the department may pursue any
13 collection remedies provided by law. Payment in full does not affect the
14 person's right to a hearing.
15

16 D. If a person requests a hearing and fails to appear at the hearing, the
17 hearing officer may issue a decision without taking evidence from that
18 person, unless that person shows reasonable cause for failure to appear
19 within seven days after the date scheduled for the hearing.
20

21 E. Taxes, license fees, penalties and interest declared to be due in the final
22 administrative decision must be paid within 30 days after the date of the
23 decision, or a bond must be filed with the court in accordance with Alaska
24 Court Rules of Appellate Procedures.
25

26 **12.XX.180 Reports by manufacturers.**
27

28 No later than the end of each calendar month, a manufacturer shall submit a
29 report to the department stating:
30

- 31 1. A list of the soft drink products and the quantity of each brought into
32 the municipality from the manufacturer during the preceding month;
- 33 2. The names and address of those persons bringing soft drink
34 products into the municipality from the manufacturer during the
35 preceding month; and
36
- 37 3. A list of the quantity of soft drink products and the quantity of each
38 brought from the manufacturer into the municipality by each person
39 named in subsection 2 of this section.
40
41

1 **12.XX.220** **Inspection and maintenance of documents and records.**
2

- 3 A. Every person subject to this chapter shall keep a complete and accurate
4 record of all soft drink products manufactured, purchased, sold, brought
5 into, transported outside of or acquired in the municipality by such person.
6
7 1. Except in the case of a manufacturer, the records shall include a
8 statement containing the name and address of the person from
9 whom soft drink products were purchased or acquired, the date of
10 delivery, the quantity of soft drink products, the trade name and
11 brand, [and the price paid].
12
13 2. Each invoice or other documentation of the sale of soft drink
14 products within the municipality shall state whether the tax imposed
15 under this chapter has been paid.
16
17 3. Persons subject to this chapter shall keep such other documents
18 and records as the department prescribes.
19
20 4. All documents and records required by this section shall be
21 preserved by persons subject to this chapter for three years. All
22 records and documents required by this chapter to be kept or
23 retained are subject to inspection within the municipality upon
24 demand by the department.
25
26 B. A licensee transferring or selling soft drink products to a cardholder must
27 keep a record of soft drink products transferred or sold to such person,
28 including the serial number of the exemption card.
29
30 C. The chief fiscal officer may, during business hours, enter the business
31 premises of a licensee or cardholder where soft drink products are kept or
32 stored, so far as it may be necessary for the purpose of examining such
33 products and the related business records.
34

35 **12.XX.230** **Administrative regulations.**
36

37 The chief fiscal officer, or designee, may adopt regulations providing for the
38 application and interpretation of this chapter and providing methods and forms for
39 reporting and collecting the tax imposed by this chapter.
40

41 **12.XX.240** **Confidentiality of records.**
42

- 43 A. All tax returns, documents, records and/or reports filed with the
44 municipality pursuant to the provisions of this chapter and all data
45 obtained from such tax returns, documents, records and/or reports are

1 confidential and may not be released for inspection by any person except
2 the mayor, chief fiscal officer, municipal attorney, internal auditor, or the
3 assembly, provided, however, that such data may be released upon court
4 order.

5
6 B. It is the duty of the chief fiscal officer to safely keep tax returns,
7 documents, records and/or reports and all data taken therefrom secure
8 from public and private inspection except as provided by this chapter.

9
10 C. This section does not prohibit the municipality from compiling and
11 publishing statistical evidence concerning the data submitted provided that
12 no identification of particular tax returns, documents, records and/or
13 reports is made. Nothing in this section shall be deemed to prohibit the
14 internal auditor from examining the tax returns, documents, records and/or
15 reports in accordance with Sections 3.20.100 through 3.20.130 provided
16 that no information obtained from specific or identifiable tax returns shall
17 be made available to persons other than those authorized to review them
18 under subsection A of this section.

19
20 D. This section does not prohibit the chief fiscal officer from sharing
21 information obtained from tax returns, documents, records, and/or reports
22 filed with the municipality pursuant to this chapter with any local, state, or
23 federal government agency for the purpose of enforcing this chapter.
24

25 **Section 2.** Anchorage Municipal Code title 10, Business Licenses and Regulations,
26 chapter 10.05, General Provisions, subsection 10.05.010 is hereby amended to add a
27 new subsection C. to read as follows (*subsection 10.05.010B is unchanged and set out*
28 *for context only; the remainder of the title, chapter, and section are unaffected and*
29 *therefore not set out*):
30

31 **10.05.010 Applicability of title.**

32 *** **

33
34 B. *Sale or purchase of tobacco products.* In addition to any licenses which
35 may be required by this title, no person may sell, purchase, possess or
36 acquire cigarettes or tobacco products in the municipality as a
37 manufacturer, distributor, direct-buying retailer, vending machine operator
38 or buyer, as defined in Section 12.40.006, without a license issued under
39 Chapter 12.40.

40
41 C. *Sale or purchase of soft drink products.* In addition to any licenses which
42 may be required by this title, no person may sell, purchase, possess or
43 acquire soft drink products in the municipality as a manufacturer,
44 distributor, direct-buying retailer, vending machine operator or buyer, as

1 defined in Section 12.XX.006, without a license issued under Chapter
2 12.XX.

3
4 (AO No. 89-144)

5
6 **Section 3.** The department of health and human services, in coordination with local
7 before and after school service program nonprofit organizations, and the Anchorage
8 School District shall establish an Obesity Prevention Program, funded with up to ____
9 percent (___%) of the proceeds collected from the excise tax authorized by this
10 ordinance. The Obesity Prevention Program shall support before and after school youth
11 obesity reduction programs on a priority basis. The initial program shall be implemented
12 within _ months of passage and approval of this ordinance

13
14 **Section 4.** Section 1 of this ordinance shall become effective _____, 201_
15 upon its passage and approval by the Assembly. Sections 2, 3, and 4 shall become
16 effective immediately upon passage and approval by the Assembly.

17
18
19 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
20 _____, 2010.

21
22
23 _____
24 Chair

25 ATTEST:

26
27 _____
28 Municipal Clerk
29
30
31
32
33
34
35
36



MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM
No. AM 172-2010

Meeting Date: March 23, 2010

1 **From:** ASSEMBLY MEMBER SELKREGG
2 **Subject:** AO 2010-29 – AN ORDINANCE OF THE ANCHORAGE MUNICIPAL
3 ASSEMBLY AMENDING TITLE 12 OF THE ANCHORAGE CODE TO
4 PROVIDE FOR THE LEVY OF AN EXCISE TAX ON SOFT DRINKS
5 WITHIN THE MUNICIPALITY AND ESTABLISHING PENALTIES;
6 AMENDING TITLE 10, BUSINESS LICENSES AND REGULATIONS;
7 PROVIDING FOR THE ESTABLISHMENT OF AN OBESITY PREVENTION
8 PROGRAM; AND PROVIDING FOR THE EFFECTIVE DATES.
9

10 Over 20 years ago, Anchorage voters approved an excise tax on cigarettes and tobacco
11 products. When the cigarette and tobacco excise tax was increased in the mid-1990's, the
12 proposed increase was put before the voters as an advisory proposition.
13

14 More recently, the Alaska Supreme Court gave municipalities guidance on the difference
15 between sales tax and excise tax, and upheld the Mat-Su Borough's authority to levy an
16 excise tax without voter approval in *Matanuska-Susitna Borough*, 192 P.3d 982 (Alaska
17 2008).
18

19 The purpose of the proposed ordinance adding a new chapter to Title 12, Taxation, is to
20 authorize an excise tax on soft drinks so that the Municipality can fund obesity prevention
21 and other health and wellness programs without an increase to property taxes.
22

23 Under the proposed ordinance, the Health and Human Services Department would
24 establish an Obesity Prevention Program using a portion of the proceeds of an excise tax
25 collected from the manufacturer, distributor, direct-buying retailer, vending machine
26 operator or other non-retail purchaser. The excise tax is not a sales tax on the retail
27 purchase and does not require voter approval.
28

29 The Finance Department would administer the excise tax program, modeled on the
30 cigarette excise tax program. Similar exemptions would apply for both excise taxes.
31

32 Unlike cigarettes and tobacco products, soft drinks are not subject to state or federal tax
33 regulation, so reporting and tracking will require new documentation. The effective dates
34 of the proposed ordinance is intended to allow the Finance Department and the Health and
35 Human Services Department sufficient time to implement the excise tax program and the
36 Obesity Prevention Program.
37

38 Respectfully submitted:
39 Sheila Selkregg, Ph.D.
40 Assembly Member, Section 5