

**NORTHWEST ARCTIC BOROUGH ASSEMBLY
ORDINANCE 16-02**

**AN ORDINANCE OF THE NORTHWEST ARCTIC BOROUGH
ASSEMBLY AMENDING CHAPTER 7.10 OF THE BOROUGH
CODE AND FOR RELATED PURPOSES.**

WHEREAS: Chapter 7.10 of the Borough Code levies a tax on the severer of certain natural resources; and

WHEREAS: the Borough Assembly wishes to revise Chapter 7.10 to further clarify application of the severance tax; and

WHEREAS: the Assembly has determined that it is in the Borough's best interest to update its severance tax code.

**NOW THEREFORE BE IT ENACTED BY THE NORTHWEST
ARCTIC BOROUGH ASSEMBLY:**

Section 1: Chapter 7.10 of the Borough Code is amended as follows, with additions indicated by underline in blue and deletions by ~~strikethrough in red~~:

**Chapter 7.10
SEVERANCE TAX**

7.10.010 Definitions.

In this chapter:

- A. "Alaska mining license tax" means the mining license tax of the state codified at AS Chapter 43.65, as amended, and in effect on the first day of January, 2015, and regulations promulgated thereunder, including those codified at 15 AAC Chapter 65. Provisions of the mining license tax amended, deleted, or added prior to the effective date of the latest amendment to this chapter shall be applicable for purposes of this chapter on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.
- B. "Bi-annual period" means any one of the following six-month periods: January 1st to June 30th, and July 1st to December 31st.

- C. "Gross income from property" means the gross income from property as defined under the Alaska mining license tax, including regulations codified at 15 AAC 65.110.
- D. "Gross production value" means that portion of gross income from property attributable to mining conducted within the borough as modified pursuant to the adjustments specifically provided in this chapter.
- E. "Mining" means mining as defined in the Alaska mining license tax.
- F. "Person" means any individual, trust, estate, partnership, corporation, joint venture, or group or combination of these acting as a unit.
- G. "PILOT agreement" means an agreement for payments in lieu of taxes.
- H. "Recovered units" means all units measured according to industry standards mined whether produced directly or contractually during the period of production. (Ord. 15-07 § 1, 2015; Ord. 15-03 § 1, 2015; Ord. 09-06 § 1, 2009)

7.10.020 Resources subject to tax.

There is levied and collected from every person, for the act or privilege of engaging in mining in the borough, a tax upon the gross production value of the person (including consideration paid to a lessor or other landowner in connection with mining property in the borough) denominated as a severance tax. The severance tax rate shall be four and one-half percent, which will be multiplied by the gross production value for the bi-annual period. The gross income from property reported each bi-annual period by a taxpayer to the state shall be the identical sum reported to the borough, subject only to modifications contained in this chapter. (Ord. 15-07 § 1, 2015; Ord. 15-03 § 1, 2015; Ord. 09-06 § 1, 2009)

7.10.030 Exemptions

A person engaged in mining shall be exempt from taxation under this chapter if either:

- A. The annual gross production value from all locations or sources within the borough owned or controlled by the person and its affiliates does not equal or exceed the amount of \$1,000,000 annually; or
- B. Such person and the borough have executed a PILOT agreement specifically exempting such operations from taxation under this chapter and such PILOT

agreement is in full force and effect. ~~Any such PILOT agreement shall generate an expected net present value using reasonable assumptions that is not less than the tax obligation that would be due under this chapter in the absence of such a PILOT agreement.~~

Any PILOT agreement shall produce revenue within a reasonable range of the amount that would be due under this chapter in the absence of such a PILOT agreement. The Assembly shall have sole discretion to consider various economic factors in determining what constitutes a reasonable range for any PILOT agreement. Any PILOT agreement shall be approved by Assembly ordinance.
The borough may issue guidelines for implementing the provisions of this subsection.

7.10.040 Collection and administration.

A. Every person subject to tax under this chapter shall register with the borough prior to beginning a severance activity.

B. Every person subject to tax under this chapter shall submit to the borough a severance tax return, under oath, at the time the tax is paid, containing the following information:

1. A description of the property from which the resource was severed or harvested by legal description or borough-assigned account number.
2. The gross amount of recovered units severed or harvested during the bi-annual period.
3. The gross production value of mining activities in the borough for the bi-annual period.
4. Such person's mining license number.
5. The signature of the taxpayer or an authorized agent of the taxpayer, under penalty of unsworn falsification in the second degree.

C. The return or tax statement along with all taxes due the borough for the bi-annual period must be received by the borough on or before the last business day of the month following the end of the bi-annual period for which the return or statement is required.

D. If receivers, trustees, assigns, agents or operators are operating the property or business, they shall make returns for the person engaged in mining, or the recipient of consideration in connection with mining property, but without relieving the person

engaged in mining, or the recipient of consideration in connection with mining property, from ultimate responsibility for submission of returns and payment of the taxes due. The tax due on the basis of the returns shall be collected in the same manner as if collected from the person of whose business they have custody and control.

E. The borough may grant a reasonable extension of time for filing returns, under regulations adopted by it.

F. The borough may adopt and publish regulations necessary for the enforcement of the tax imposed by this chapter. The borough shall prepare and distribute all forms necessary or useful in the administration of the tax imposed by this chapter. (Ord. 15-07 § 1, 2015; Ord. 15-03 § 1, 2015; Ord. 09-06 § 1, 2009)

7.10.050 Enforcement.

A. If a person fails to file a return at the time prescribed by law or regulation, or makes, willfully or otherwise, a false or fraudulent return, the borough shall make the return from the borough's own knowledge and from such information the borough can obtain through testimony or otherwise. A return so made and subscribed by the borough is prima facie good and sufficient for all legal purposes.

B. The borough may seek an injunction requiring compliance with the provisions of this chapter.

C. This tax constitutes a lien chargeable against the property owned by the person engaged in mining within the borough. The borough may foreclose the lien in the same manner as any other lien against real or personal property. (Ord. 15-07 § 1, 2015; Ord. 15-03 § 1, 2015; Ord. 09-06 § 1, 2009)

7.10.060 Severance tax return verification.

When the borough considers it necessary, it may, by written notice:

A. Require a person engaged in mining, any agent or employee of the person, or the purchaser of resources mined under this chapter to furnish any additional information reasonably necessary to compute the amount of the tax or to determine if a tax is due;

B. Examine the books, records, and files of any such person;

C. Conduct hearings and compel the attendance of witnesses and the production of books, records, and papers of any person; and

D. Make an investigation or hold any inquiry reasonably necessary to a disclosure of facts as to:

1. The amount of extraction or gross production value of a natural resource of a person engaged in mining;
2. The purchaser of the natural resource; and
3. Transportation of the resource. (Ord. 15-07 § 1, 2015; Ord. 15-03 § 1, 2015; Ord. 09-06 § 1, 2009)

7.10.070 Confidentiality.

Information and materials in the possession of the borough that disclose the particulars of the business or affairs of the payer of taxes under this chapter will be kept confidential by the borough except in connection with an official investigation by the borough or other agency enforcing the laws of the borough or of the state. The borough may publish statistics in a manner that prevents identification of particular returns and may publish tax lists showing the names, taxes, penalties, and interest with respect to taxpayers who are delinquent to assist in the collection of taxes. (Ord. 15-07 § 1, 2015; Ord. 15-03 § 1, 2015; Ord. 09-06 § 1, 2009)

7.10.080 Penalties and interest.

- A. A person who fails, refuses, or neglects to file a severance tax return in compliance with this chapter shall, in addition to any other penalties provided by law, be liable for a penalty of 10 percent of the tax.
- B. Interest shall accrue on the tax due including penalties and interest at the rate of 12 percent per year from the date such taxes are due. Partial payments shall be applied first to accrued penalties, then to interest and then to principal. Payment shall be made by wire transfer of immediately available funds received by the borough no later than the due date.
- C. The person assessed under this chapter is liable for the amount of taxes, interest and penalties due. The tax, together with penalties and interest, may be collected in a personal action brought in the name of the borough. (Ord. 15-07 § 1, 2015; Ord. 15-03 § 1, 2015; Ord. 09-06 § 1, 2009. Formerly 7.10.090)

7.10.090 Right of adjustment and disclosures.

- A. If at any time a taxpayer under this chapter makes an additional payment to or receives a refund from the state with respect to the Alaska mining license tax for mining activities conducted within the borough ("state adjustment"), based on income

or other amounts that were or should have been reported to the borough under this chapter, then, within 60 days after such state adjustment is made, such taxpayer shall notify the borough in writing of such state adjustment and make payment to the borough of any additional tax due under this chapter based on income or other amounts included in the state adjustment. The borough's right to receive such payment as a result of a state adjustment is in addition to any and all other legal and equitable rights and remedies that the borough may have.

B. As a condition of the act or privilege of engaging in the business of mining activities in the borough, each person subject to taxation under this chapter hereby agrees to execute a limited waiver of confidentiality, limited power of attorney, or similar form to effect a waiver of confidentiality rights under AS 43.05.230(a) or other confidentiality rights and authorizes the Department of Revenue of the state to disclose to the borough and its officers and employees any and all information in the possession of the Department of Revenue of the state regarding such person's obligations under the Alaska mining license tax relating to time periods during which such person conducted mining activities within the borough. At any time or from time to time, at the borough's request and without further consideration, such person shall execute and deliver to the borough or the state such other instruments, provide such materials and information and take such other actions as the borough or the state may reasonably deem necessary or desirable in order to more effectively provide for the disclosures contemplated by this subsection. (Ord. 15-07 § 1, 2015; Ord. 15-03 § 1, 2015)

Section 2: This Code Ordinance shall be effective immediately.

PASSED AND ADOPTED THIS 15th DAY OF April 2016.



Carl Weisner, Assembly President

PASSED AND APPROVED THIS 15th DAY OF April 2016.



Clement Richards, Sr., Mayor

SIGNED AND ATTESTED TO THIS 15th DAY OF April 2016.



Stella Atoruk, Borough Clerk

ATTEST:

First Reading: March, 22 2016
Second Reading: April, 15 2016

