

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2012-09 (Substitute)

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL LEVYING A 2.5% TAX ON SEAFOOD PRODUCTS SEVERED FROM COMMERCIAL FISHING WATERS

WHEREAS, the City of Dillingham has historically devoted substantial public resources for construction, operation and maintenance of public infrastructure intended to support commercial fisheries catching and processing salmon landed in waters of Bristol Bay adjacent to Dillingham; and

WHEREAS, much of the infrastructure supporting Bristol Bay commercial fishing was constructed with federal and state grants which do not provide for ongoing maintenance or replacement funds; and

WHEREAS, it is anticipated that there will be a need to improve infrastructure related to commercial fishing and that state and federal grant funds will not be as available as they were in the past; and

WHEREAS, all other municipalities of similar size and with similar fishing related infrastructure needs in the general Bristol Bay area levy a tax on raw fish including, the Bristol Bay Borough, the Lake and Peninsula Borough and the cities of Togiak, Egegik and Pilot Point; and

WHEREAS, the estimated taxable value of commercial salmon harvested in or adjacent to Dillingham ranges between \$20,000,000 and \$30,000,000 annually;

BE IT ENACTED BY THE COUNCIL OF THE CITY OF DILLINGHAM:

Section 1. Amendment of Title 4. Title 4 of the Dillingham Municipal Code is hereby amended by adoption of a new Chapter 4.22, Severance Tax, to read as follows:

Chapter 4.22

SEVERANCE TAX

Sections:

- 4.22.010** **Definitions**
- 4.22.020** **[RESOURCES SUBJECT TO TAX] Levy of Tax**
- 4.22.025** **Tax Rates for Resources Subject to Tax**
- 4.22.030** **Exemptions**
- 4.22.040** **Collection and Administration**

(New language **bold and underlined** and deleted language in [CAPS AND BRACKETS].)

- 4.22.045 [SPECIAL PROVISIONS FOR PRE-EXISTING CONTRACTS]Tax Refunds
- 4.22.047 Appeal of Denial of Tax Refund
- 4.22.050 Enforcement and Penalties
- 4.22.060 Severance Tax Return Verification
- 4.22.070 Confidentiality
- 4.22.080 Liability for and Collection of Severance Tax
- 4.22.090 Penalties and Interest

4.22.010 Definitions.

When not clearly otherwise indicated by the context, the following words and phrases, as used in this chapter, have the following meanings:

“Calendar Quarter” means any one (1) of the following three (3) month periods beginning on January 1: January 1-March 30, April 1-June 30, July 1- September 30, October 1-December 30.

“City” means City of Dillingham.

"Market value" means the prevailing value paid for seafood products of like kind and quality by seafood or fisheries businesses in the same market area to fishermen who own their vessels.

“Point of Severance” means the point at which seafood products were harvested (removed from the water) within the City.

“Recovered Units” means all units extracted, or removed whether produced directly or contractually during the period of extraction or removal production.

“Seafood Products” means any raw finfish, shellfish, mollusks and other commercial products of the sea.

“Severer or Harvester” means a person, company, corporation, or other entity engaged in the business of severing or harvesting natural resources within the City. This includes offshore processors of seafood products who process, deliver, catch, or receive seafood products within the boundaries of the City of Dillingham if those activities are not already subject to the City’s Raw Fish Tax. It also includes persons who harvest seafood products within the boundaries of the City and transport the seafood products themselves to locations outside the City for sale and/or processing provided that the sales made by such harvesters are not already subject to the City Raw Fish Tax. It does not include persons who sever or harvest seafood products for subsistence or sport uses.

4.22.020. Levy of tax.

There is levied in the City, on any severer or harvester harvesting or processing Seafood Products for sale, profit, or commercial use provided that these Seafood Products are not already subject to the City Raw Fish Tax, an excise tax, denominated as a severance tax. The tax rate shall be the applicable rate as set forth in subsection 4.22.025.

(New language **bold and underlined** and deleted language in [CAPS AND BRACKETS].)

4.22.025 Tax rates for resources subject to tax.

The tax levied by this section shall be at the following rates:

- A. For Seafood Products, 2.5 % of the market value;
- B. For resources not included herein; as may be considered and approved by the City Council.

4.22.030 Exemptions.

- A. If the annual market value of a natural resource severed within the City by a severer or harvester does not equal or exceed the amount of \$10,000, the severer or harvester shall be exempt from taxation under this chapter.
- B. The harvesters and processors of raw seafood products are exempt from taxation under this chapter if the seafood products harvested or processed are already subject to the City Raw Fish Sales and Use Tax.
- C. The harvesters and processors of raw seafood products are exempt from taxation under this chapter if the seafood products harvested or processed is for the sole purpose and use as bait.

4.22.040 Collection and Administration.

- A. A purchaser of seafood products from a severer or harvester subject to tax under this Chapter shall register with the City and, collect, and transmit the tax on the severer's behalf.
- B. A purchaser who timely and correctly files a properly completed tax return along with full payment of all taxes due under this chapter shall be entitled to retain five percent of the total tax collected during the calendar quarter to defray administrative costs up to, but not to exceed \$300.00.
- C. The purchaser shall hold the tax collected in trust for the city until paid. The purchaser shall be entitled to keep any interest accruing to the tax account if the payment is timely.
- D. The market value for the calendar quarter shall include the amount paid to any severer or harvester for taxable resources purchased but not paid for by the purchaser during any prior calendar quarter.
- E. Every purchaser who makes payments for a seafood product subject to severance tax in a calendar quarter shall submit to the City a City of Dillingham severance tax return, under oath, containing the following information:
 - 1. A description of the waters from which the resource was severed or harvested by commercial fishing district or such other description of location as may be approved by the City;
 - 2. The gross amount of recovered units purchased from each severer or harvester during the calendar quarter; and

3. The market value of all recovered units severed or harvested during the calendar quarter as of the date of the return.
- F. The return along with all taxes due the City for the calendar quarter must be received by the City on or before the last business day of the month following the end of the calendar quarter for which the return or statement is required. If no payments for seafood products were made in the previous calendar quarter no return is required to be filed.
 - G. This tax constitutes a lien chargeable against all property whether tangible or intangible owned by the severer. The lien may be foreclosed by the City in the same manner as any other lien against real or personal property.

4.22.045 Tax Refunds.

- A. A taxpayer from whom severance tax is collected and timely remitted to the City by a tax collector is eligible for a partial refund of severance tax, if they fall into one of two categories:
 1. low income
 - a. household income, assets, and financial resources fall within the eligibility standards for the food stamp program under 7 U.S.C. 2011-2025, as amended; or
 - b. who has paid a reduced price annual fee for the taxpayer's fishing permit under AS 16.43.160(d) for the calendar year during which severance tax was collected from the taxpayer; or
 2. real property owner and has timely remitted real property tax.
- B. A taxpayer who qualifies as low income is eligible for a partial refund of fifty per cent of the tax paid under this Chapter.
- C. A taxpayer owning real property tax in Dillingham is eligible for a partial refund equal to fifty percent of the severance tax collected from the taxpayer up to a maximum refund equal to fifty per cent of the property tax paid by the taxpayer to the City.
- D. The taxpayer can apply for the low income or real property tax refund, but not both. .
- E. Any person entitled to a partial refund may obtain a partial refund from the City upon completion and submission of a refund application form to be provided by the City together with such supporting documentation as required by the City to establish eligibility for and the amount of the refund.
- F. An application for a severance tax refund shall be filed during the period that begins November 1 and ends December 31 of each year. Failure to submit a refund application by December 31 means that no refund is due to the taxpayer for that year.
- G. Applications for a refund under Section 4.22.045(B) above shall be treated by the city as confidential documents not subject to disclosure under Section 2.01.040 of this Code.
- H. All refund amounts due to a taxpayer shall be paid by the City on or before March 15 each year. Should the City fail to pay any portion of a refund due interest shall accrue from the due date until the date paid at an annual rate of [FIVE PER CENT (5%)] **eight percent (8%)**.

(New language **bold and underlined** and deleted language in [CAPS AND BRACKETS].)

I. The City may offset against any refund due to a taxpayer amounts owed to the City by the taxpayer for sales tax, port and harbor fees, personal property tax, utility charges or any other fines or fees. The amount so withheld shall be identified to the taxpayer in writing on or before February 15 of each year. If the taxpayer believes the offset amount is in error the taxpayer is entitled to an informal hearing before the City Manager on or before March 14.

4.22.047 Appeal of Denial of Tax Refund

- A. Any person whose application for a tax refund is denied may appeal to the city manager.
- B. No appeal may be taken unless the applicant files with the city clerk written notice of appeal specifying grounds for such appeal within thirty days from the date the notice of denial of refund was mailed.
- C. The city clerk shall acknowledge the written appeal by sending the appellant a notice, and notify the appellant by mail of the time and place for the hearing before the city manager.
- D. The procedure for the appeal hearing before the city manager will be informal. The appellant, and the person who made the decision on the refund application may themselves appear and present witnesses. The burden of proof in all cases shall be upon the party appealing.
- E. The city manager shall make a written decision within five (5) working days of the conclusion of the appeal hearing.
- F. Any taxpayer aggrieved by the city manager's final decision, may appeal that decision to the superior court by filing with the city clerk written notice within thirty days of the date of mailing of the city manager's decision. An appeal to the superior court under this section is an administrative appeal heard solely on the administrative record. The notice shall specify grounds for appeal.

4.22.050 Enforcement and Penalties.

- A. The superior court, upon request of the City, shall issue an injunction requiring compliance with the provisions of this chapter.
- B. the City may determine the severance tax on parties who have not filed a return in an amount based on historical data or the best information reasonably available to the City.
- C. 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 ten (10) percent of the tax.

4.22.060 Severance Tax Return Verification.

The City Manager or his/her designee may:

- A. Require a severer or harvester, any agent or employee of this person, or the purchaser of natural resources taxed 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 production of a natural resource of a severer or harvester;
 - 2. The purchaser of the natural resource; and
 - 3. Transportation of the resource.

4.22.070 Confidentiality.

Information and materials in the possession of the City which disclose the particulars of the business or affairs of then payer of taxes under this chapter will be kept confidential by the City except in connection with an official investigation by the City or other agency enforcing the laws of the City or the State. The City may publish statistics in a manner which 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.

4.22.080 Liability for and Collection of Severance tax.

The severer or harvester, or the purchaser or processor of the resources taxed 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 City.

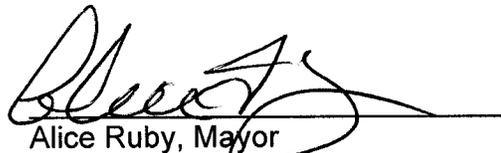
4.22.090 Penalties and Interest.

All taxes due under this chapter but not timely paid as required are subject to a penalty of 5% of the tax due. Interest shall accrue on the tax due including penalties and interest at the rate of 12% 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. A payment is timely paid when mailed to the City postage prepaid bearing a postmark date no later than the due date.

Section 2. Effective Date. This ordinance shall be effective as of June 1, 2012.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on

May 17, 2012.



Alice Ruby, Mayor
City of Dillingham

ATTEST:




Janice Williams, City Clerk