



## ORDINANCE SERIAL NO. 2011-05

### AN ORDINANCE OF THE ALEUTIANS EAST BOROUGH CREATING BOROUGH CODE SECTION 60.40: SEVERANCE TAX

**WHEREAS**, the legislative power of the Aleutians East Borough is vested with the Assembly pursuant to Alaska State Statute 29.20.050; and

**WHEREAS**, large quantities of natural resources are extracted and exported from the Borough; and

**WHEREAS**, severance taxes for the extraction, exportation and sale of natural resources is a common revenue source in other municipalities and states; and

**WHEREAS**, an area-wide severance tax will establish an additional revenue source for the Aleutians East Borough; and

**WHEREAS**, the Assembly has determined that it is in the best interest of the public to have more diversified revenue sources to fund the provision of local government.

### **NOW, THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE ALEUTIANS EAST BOROUGH:**

**Section 1.** **Classification.** This ordinance is of a general and permanent nature and shall become part of the Borough code.

**Section 2.** **Submission to voters.** The Borough shall submit the following proposition to the qualified voters at the regular Borough election on October 4, 2011. The proposition must receive an affirmative vote from a majority of the qualified voters voting on the question to be approved.

PROPOSITION No. 1  
Severance Tax

Shall the Aleutians East Borough levy a severance tax on the sale of natural resources from within the Aleutians East Borough as follows:

**Metal ores & coal:** 1.5% times gross production value per ton;  
**Gravel:** 10 cents per cubic yard;  
**Commercial Products of Borough Waters:** 2% of purchase price;

YES

NO

**Section 3. Effectiveness.** The proposition in section 2 of this ordinance shall take effect on \_\_\_\_\_, only if it is approved by a majority of the qualified voters voting on the proposition at the regular Borough election on \_\_\_\_\_, 2011. The remaining sections of the ordinance shall take effect upon adoption by the Aleutians East Borough Assembly.

**Section 4: Adoption by Section.** Code Section 60.40 is hereby created and Code Section 60.40 as annexed hereto as part of this ordinance is hereby adopted as Code Section 60.40 – Severance Tax - of the Code of Ordinances of the Aleutians East Borough.

INTRODUCED:

4/23/11

ADOPTED:

6/6/11

ATTEST:

CLERK

Date:

6/6/11

  
Stanley Mack, Mayor

Date: 6/6/11

**Chapter 60.40**  
**SEVERANCE TAX**

Sections:

60.40.010	Definitions
60.40.020	Resources subject to tax
60.40.030	Exemption
60.40.040	Collection and administration
60.40.050	Enforcement and penalties
60.40.060	Severance tax return verification
60.40.070	Confidentiality
60.40.080	Liability for and collection of severance tax
60.40.090	Penalties and interest

**60.40.010 Definitions.**

- A. "The gross production value" means the value per unit at the point of severance multiplied by the number of recovered units of the natural resources sold during the calendar quarter.
- B. "Severer or harvester" means a person, company, corporation or other entity engaged in the business of severing or harvesting natural resources. This includes offshore processors of fish products who process, deliver, catch, or receive fish products within the boundaries of the Aleutians East Borough if those activities are not already subject to the Borough's Sales and Use Tax. It also includes fish harvesters who harvest fish within the boundaries of the Borough and transport the fish themselves to locations outside the Borough for sale and/or processing provided that these harvesters are not already subject to the Borough Sales and Use Tax.
- C. "Calendar quarter" means any one of the following three-month periods beginning July 1<sup>st</sup>: July 1<sup>st</sup> to September 30<sup>th</sup>; October 1 to December 31<sup>st</sup>; January 1 to March 31<sup>st</sup>; and April 1 to June 30<sup>th</sup>.
- D. "Recovered units" means all units mined, extracted, or removed whether produced directly or contractually during the period of production.
- E. "Point of severance" for purposes of computing the tax is defined as:
1. Prepared for transport at the mine site in the case of resources as defined in 60.40.020 (A);
  2. The scale at the pit or quarry in the case of resources as defined in 60.40.020 (B);
  3. The dock in the case of resources defined in 60.40.020 (C).

F. "Commercial Products of Borough Waters" means any raw finfish or bottomfish, shellfish, mollusks or other invertebrates and all other commercial products of the sea harvested in Borough Waters, whether fresh, estuarine or salt, for sale, profit or commercial use.

**60.40.020 Resources subject to tax.**

There is levied in the Borough, on any severed or harvester of certain natural resources, an excise tax, denominated as a severance tax. The tax rate shall be the Borough-wide mill levy as determined annually by the assembly which will be multiplied by the gross production value for the calendar quarter resulting from the following activities:

- A. Mining, extracting, harvesting, removing or producing for sale, profit or commercial use, any copper, gold, silver, zinc, lead, molybdenum, or other metallic mineral product, compound, or combination of mineral products;
- B. Gravel mining, quarrying, or producing for sale, profit, or commercial use, any sand, gravel, rock or coal; and
- C. Harvesting and processing Commercial Products of Borough waters.

**60.40.030 Tax rates for resources subject to tax.**

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

- A. For metal ores and coal extracted from the ground, 1.5% times the gross production value per ton;
- B. For gravel extracted 10 cents per cubic yard;
- C. For Commercial Products of Borough Waters, 2% of purchase price;
- D. For resources not included herein: as may be considered and approved by the Borough Assembly.

**60.40.040 Exemption.**

- A. If the annual gross production value of severed or harvested natural resources within the Borough does not equal or exceed the amount of \$5,000 annually, the severer or harvester shall be exempt from taxation under this chapter. This exemption does not apply to 60.40.020(C).
- B. Local governments are exempted from payment of this tax for resources that the local government owns before severance which are to be used after severance exclusively in public works projects undertaken by that local government within the local

government's jurisdiction or as a local match for public works projects undertaken by that local government within the local government's jurisdiction.

**60.40.050 Collection and administration.**

- A. Every severer or harvester of resources subject to taxation under this chapter, shall register with the Borough prior to beginning a severance or harvesting activity. Registration shall take place on forms provided by the Borough.
- B. Except regarding resources described in 60.40.20 (C), every severer or harvester 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 calendar quarter.
  3. The gross sales value of all recovered units severed or harvested during the calendar quarter.
- C. With regards to resources described in 60.40.20 (C), every severer or harvester shall submit to the processor or purchaser of such resource an Aleutians East Borough severance tax return, under oath, containing the following information:
1. A description of the waters from which the resource was severed or harvested by longitude and latitude or such description of location as may be approved by the Borough.
  2. The gross amount of recovered units severed or harvested during the calendar quarter.
  3. The gross sales value of all recovered units severed or harvested during the calendar quarter.
- After receipt of the Aleutians East Borough severance tax return, the receiving processor shall withhold the applicable percentage of the gross production value of the resource, remitting 95% to the Borough along with the Aleutians East Borough severance tax return completed by the severer or harvester as the applicable Aleutians East Borough severance tax on that resource, retaining 5% as a tax collection fee, but not to exceed \$300.00. It is the responsibility of the severer or harvester in every instance to insure that the Aleutians East Borough severance tax is paid.
- D. The return or tax statement along with all taxes due to the Borough for the calendar quarter must be received by the Borough 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.

E. This tax constitutes a lien chargeable against the property owned by the severer. The lien may be foreclosed by the Borough in the same manner as any other lien against real or personal property.

**60.40.060 Enforcement and penalties.**

A. The superior court, upon the request of the finance director, shall issue an injunction requiring compliance with the provisions of this chapter. In the alternative, the finance director may determine the severance tax on parties who have not filed a return in an amount based on historical data and the best information available.

B. 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.

**60.40.070 Severance tax return verification.**

Except for those harvesters who have filed under and fully complied with 60.40.50 (D) and have paid all taxes when due, the finance director, or his designee, may:

A. Require a person engaged in natural resource extraction, production, or transportation, any agent or employee of the 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 resources of an extractor, producer, or seller;
2. The purchaser of the natural resource; and
3. Transportation of the resource.

**60.40.080 Confidentiality.**

Information and materials in the possession of the Borough which 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 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.

**60.40.090 Liability for and collection of severance tax.**

The severer or harvester or, in the case of 60.40.20 (C) the purchaser or processor of the resources 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.

**60.40.100 Penalties and interest.**

All taxes due under this chapter but not timely paid as required are subject to a penalty of 10 percent of the tax due. 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. A payment is timely paid when mailed to the Borough postage prepaid bearing a postmark date no later than the due date.