

**DENALI BOROUGH, ALASKA
ORDINANCE NO. 24-10
INTRODUCED BY: MAYOR CHRIS NOEL**

**AN ORDINANCE TO AMEND DENALI BOROUGH CODE CHAPTER 3.30
SEVERANCE TAX.**

BE IT ENACTED by the Assembly of the Denali Borough, Alaska that:

Section 1. Classification. This ordinance is of a general and permanent nature.

Section 2. Purpose. The purpose of this ordinance is to amend Denali Borough Code 3.30 Severance Tax.

Section 3. Procedure.

**DENALI BOROUGH CODE
CHAPTER 3.30
SEVERANCE TAX**

Sections:

- 3.30.010 Definitions.
- 3.30.020 Imposition of severance tax.
- 3.30.040 Administration of tax.
- 3.30.050 Tax Exemptions.
- 3.30.060 Registration required.
- 3.30.070 Title to taxes.
- 3.30.080 Collection of severance tax.
- 3.30.090 Duty to file tax return and to transmit taxes to the borough.
- 3.30.100 Estimated tax.
- 3.30.110 Confidentiality.
- 3.30.120 Severance tax audits.
- 3.30.130 Penalties and interest.
- 3.30.140 Violations.
- 3.30.150 Civil action authorized.
- 3.30.160 Tax lien.
- 3.30.170 Sale of business.
- 3.30.180 Severability.
- 3.30.190 Appeal.

3.30.010 Definitions.

- A. "Administrative costs of collection" means the actual amount of attorney's fees, litigation costs, and other expenses incurred by the borough in collecting any

taxes, interest, and/or penalties due under this chapter or in otherwise enforcing any provision of this chapter.

- B. "Commencing operations" means the act of offering the severance of a natural resource to individual customers.
- C. "Contractual transfer" means the event where gross production leaves the possession, custody or control of the severer.
- D. "The gross production" means the number of recovered units of the natural resource severed.
- E. "Quarter" means the three-month periods ending March 31st, June 30th, September 30th, and December 31st.
- F. "Recovered units" means all units mined, quarried, extracted, or removed and sold whether produced directly or contractually during the period of production.
- G. "Seasonal" means a period beginning March 1 and ending September 30.
- H. "Severer" means a person, company, corporation or other entity engaged in the business of mining, quarrying, extracting, removing, or producing for sale, profit, or commercial use, any coal, gravel and/or limestone.

3.30.020 Imposition of severance tax.

There is levied in the Denali Borough, on any severer of certain natural resources, an excise tax denominated as a severance tax. The tax rate shall be in an amount equal to \$0.05 per ton of the gross production of coal and limestone and \$0.05 per cubic yard of gravel resulting from the following activities: mining, quarrying, extracting, removing, or producing for sale, profit, or commercial use any coal, gravel and/or limestone. The tax liability is accrued upon sale or contractual transfer.

3.30.040 Administration of tax.

The borough mayor, or their designee, is responsible for the administration of severance tax procedures.

3.30.050 Tax Exemptions.

- A. The tax will not be imposed on projects for the Denali Borough where the Denali Borough provides the severed resources being used.
- B. The tax will not be imposed on single extraction events from civil excavations under 1,000 cubic yards that are utilized on-site.

3.30.060 Registration required.

- A. It is unlawful to engage in business as a severer without obtaining a certificate of registration under this section. Failure to comply will result in penalties per DBC 03.30.080.
- B. Every severer shall file with the borough a registration application on a form prescribed by the borough no later than January 1st for each year of operation, no

later than April 1st of each year of operation for seasonal registration, or before commencing operations of a new business that severs coal, gravel and/or limestone or an established business that severs coal, gravel and/or limestone that was not registered to operate in the prior year. A severer whose main business is located within the Denali Borough and has been in operation for five consecutive years may apply for a five-year certificate of registration and shall remain exempt from reapplying annually.

- C. A severer may apply for a seasonal certificate of registration if that severer engages in business after March 1 but before September 30 in a calendar year.
- D. Severance registration forms are prescribed by the borough, and shall contain the following information:
 - 1. Dates of operation;
 - 2. Type of natural resource severed;
 - 3. Current contact information including mail, email, primary physical location and telephone;
 - 4. The name of the individual who serves as the applicant's primary point of contact.
- E. Upon receipt of a properly executed application and in the absence of monies owed to the borough, the borough shall issue a certificate of registration authorizing the severer to collect the tax. The certificate shall also state the name of the business, the physical address of the principal place of business to which it is applicable, period of time the severer is registered to operate, and the permit expiration date.
- F. The certificate of registration is not assignable and nontransferable. The severer shall promptly surrender the certificate to the borough when the severer permanently ceases to operate at the principal location named on the certificate. A severer shall submit a new or updated application for other changes, such as business name changes, owner/operator changes, and/or change in business organization. If the business is continued at the same location but there is a change in its name or form of organization, the severer making such change shall, in addition to submitting a new application, surrender its existing certificate to the borough.
- G. The borough may revoke a certificate of registration if a severer fails to comply with any of the provisions of this chapter.
- H. A severer shall not sever coal, gravel and/or limestone subject to tax imposed in this chapter if the severer does not possess a valid certificate of registration, or has had its certificate of registration revoked. A severer who severs coal, gravel and/or limestone without a valid certificate of registration, or under a revoked registration, is subject to penalties and/or actions provided in DBC 3.30.130.
- I. Registration information is public information.

3.30.070 Title to taxes.

Title to taxes collected pursuant to this chapter shall vest in the borough upon collection by a severer. Pending transmittal to the borough, every severer has a fiduciary duty to the borough for these taxes. Every severer shall segregate and identify the tax funds on its books and records as being held in trust for the borough.

3.30.080 Collection of severance tax.

- A. Every severer that engages in the severance of coal, gravel and/or limestone subject to taxation under this chapter shall collect the tax imposed by this chapter from the customer no later than the time at which the sale or contractual transfer is complete. Taxes not collected when due are delinquent.
- B. Every severer shall state the amount of tax due under this chapter separately from all sales and other charges on any invoice or receipt given to a customer.

3.30.090 Duty to file tax return and to transmit taxes to the borough.

- A. Severance tax returns shall be made on the forms prescribed by the borough for that purpose, and shall contain the following information:
 - 1. Total yards/tons extracted;
 - 2. Total amount of taxes due thereon under this chapter;
 - 3. Such other information and documentation as the borough may require.
- B. Every severer extracting coal, gravel, and/or limestone for sale or contractual transfer in the borough in any quarter shall file a return and remit taxes due on or before the last day of the month following the end of the quarter. Should that day fall on a day the borough office is not open, the deadline will be extended to the next borough business day. Returns and taxes not received or postmarked by the due date will be deemed delinquent and subject to penalties per DBC 3.30.130. A severer which makes no taxable sales or contractual transfers in a given quarter for which they have registered shall nonetheless file a return with the borough establishing that no taxable sales or contractual transfers were made.
- C. On or before the due date of the return for each quarter, every severer shall transmit the taxes due on sales or contractual transfers completed during that quarter to the borough. Regardless of whether the return has been filed, taxes due for a given quarter which are not transmitted to the borough on or before the due date of the return for that quarter are delinquent.
- D. Taxes and tax returns will be considered to have been timely remitted and/or filed to the borough only when the taxes and-returns are electronically transmitted, received in the borough office, or postmarked, on or before the date on which the taxes are due.

3.30.100 Estimated tax.

If the borough is unable to ascertain the tax due from a severer because the severer failed to file a quarterly return as required under this chapter, to remit collected taxes, to collect taxes, to keep accurate books, to allow inspection, or to maintain the records required by this chapter, has filed a false, inaccurate, or incomplete return, or has falsified records, the borough shall estimate the tax due based on any available evidence. Notice of the borough's estimate shall be mailed to the severer. Unless the severer files an accurate quarterly return covering the time period subject to the borough's estimate or files an appeal within 30 days of the mailing of the borough's estimate, the borough's estimate shall become final for the purpose of determining the severer's tax liability.

3.30.110 Confidentiality.

- A. Permit application information is public. Except as otherwise provided herein, all returns filed with the borough for the purpose of complying with the terms of this chapter and all data obtained from such returns are confidential and, to the extent permitted by Alaska law, shall be kept from inspection of all persons other than officers, agents and employees of the borough; provided, however, such returns and/or information obtained therefrom may be discussed by the assembly in public session the written consent of the severer's that have submitted them.
- B. In the course of a criminal or civil action to enforce any provision of this chapter the borough may allege prove, publish, and produce for any purpose any return and/or information previously filed with the borough. The borough may deliver to a severer or their authorized representative a copy of any return filed by the severer or on their behalf. The borough may also publish statistics concerning the information contained in returns if the publication is done in such a manner that the information contained in a particular return does not disclose the identity of any severer who submits a return in accordance with this chapter.
- C. It is unlawful for any person to divulge to another any return or any information obtained from a return filed with the borough except as provided in this section.

3.30.120 Severance tax audits.

- A. Recording Keeping Required. Every severer shall keep and preserve for a period of three years records of all sales and contractual transfers completed, the amount of taxes collected, and such other books or accounts as may be necessary to determine the amount of tax for which the severer is liable thereunder. Each severer shall permit the borough or its agent to examine, inspect, and copy said records, books, and accounts at any reasonable time, at the severer's place of business within the borough or the borough office, whichever is more convenient for the severer.

- B. Compliance Audits. The borough reserves the right to conduct audits of compliance with borough tax code. In the event of an audit, borough requests for books, accounts or copies of specific records shall be in writing to the severer and the severer shall have 30 days to respond. All audits shall be performed by a professional auditor licensed as a certified public accountant in the state of Alaska and retained for that purpose.
- C. Failure to Comply with Audit. Any severer who fails to comply with the provisions set forth in this section may be subject to penalties per DBC 3.30.130. For the purpose of ascertaining the correctness of any return, or determining the amount of tax collected or which should have been collected by any severer, the mayor or their agent may hold audits, investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records, accounts or memoranda of any such severer, and may require the attendance of any person through issuance of a subpoena which shall be enforced under the Alaska Rules of Civil Procedure in the same manner as subpoenas issued by an officer or agency of the state.

3.30.130 Penalties and interest.

- A. Operating without a valid registration is subject to a penalty of \$250 per annual incident.
- B. Any failure to file a timely return and transmit the tax to the borough as required by this chapter shall be considered delinquent. A delinquent account shall be subject to:
 - 1. A penalty of \$25 for a return that is filed late or a return that is not filed where a return is expected to be filed.
 - 2. Taxes delinquent for 30 days or less are subject to a penalty of 10 percent of taxes due.
 - 3. Taxes delinquent for more than 30 days are subject to an additional penalty of 15 percent of taxes due.
 - 4. Interest on unpaid taxes shall be assessed at the statutory rate set forth in AS 45.45.010.
- C. Penalties and interest are due immediately upon accrual and are delinquent thereafter.
- D. Failure to comply with audit provisions in this chapter may be assessed a penalty of \$150.00 per day commencing 31 days after receiving notice of intent to audit, or upon a specified audit date, whichever is later until provisions have been satisfied.
- E. Any tax or penalty assessed that is delinquent for more than 90 days is subject to civil action per DBC 3.30.150.

3.30.140 Violations.

Any severer who fails to collect or remit all or any portion of the tax provided for in this chapter, or fails or refuses to comply with the provisions of this chapter, is guilty of a violation.

3.30.150 Civil action authorized.

- A. The borough may institute a civil action, pursuant to AS 29.25.070, to enjoin a severer from engaging in the severance of coal, gravel and/or limestone in the borough until the severer has a valid permit. The borough may also recover from the severer the civil penalty imposed by this section and the borough's administrative costs of collection incurred in enforcing this section.
- B. The borough may institute a civil action against a severer to recover taxes which the severer failed to collect, or which the severer collected and failed to transmit to the borough, together with the penalties, interest, and administrative costs of collection imposed by DBC 3.30.130. In any such action, a tax return or estimated tax under DBC 3.30.100 shall constitute prima facie evidence of the amount of tax which was, or should have been, collected.
- C. The borough may institute a civil action against a severer who fails to file a timely return in order to recover the penalties and administrative costs of collection imposed by this section.
- D. Pursuant to AS 29.25.070, the borough may institute a civil action against any person who violates a provision of this chapter. In addition to injunctive and compensatory relief, the borough may recover its administrative costs of collection and a civil penalty. The borough may bring an action to enjoin a violation or to recover a civil penalty notwithstanding the availability of any other remedy. Each day that a violation of this chapter continues constitutes a separate violation.

3.30.160 Tax lien.

- A. In addition to any other remedies and administrative procedures provided under this chapter, the borough may file a civil action against any seller and/or buyer for recovery of any tax, unremitted tax, penalties, interest, costs, and fees, that have not been paid or remitted when due. The borough must file any such civil action within six years of the date that such tax, unremitted tax, penalties, interest, costs, and fees were due under this chapter.
- B. Any tax, unremitted tax, penalties, interest, costs and fees that this chapter requires a seller and/or buyer to pay or remit shall constitute a lien in favor of the borough upon all assets, earnings, revenue, and property of such seller and/or buyer. This lien arises when any such payment or remittance is not made when due and continues until the payment or remittance is fully satisfied through execution, foreclosure sale, or any other legal means. This lien is not valid as against a mortgagee, pledgee, purchaser, or judgment creditor until notice of the lien is filed in the nearest recorder's office of the nearest recording district. Upon such filing, the

lien is superior to all other liens except as otherwise provided by state or federal law.

3.30.170 Sale of business.

If any severer sells their extraction business to another person or entity, the severer shall file a final tax return and transmit all tax due within 30 days after the closing date of the sale.

3.30.180 Severability.

If a court of competent jurisdiction determines that any provision of this chapter or any application thereof to any person or circumstance is invalid, the remainder of this chapter and its application to other persons or circumstances shall not be affected thereby.

3.30.190 Appeal.

- A. A person aggrieved by the application or interpretation of any provision of this chapter shall appeal to the board of review per DBC 5.20.120.
- B. A person aggrieved by the final action of the borough may appeal to the superior court in the manner provided in DBC 5.20.130.

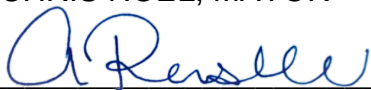
Section 4. Effective Date. Effective January 1, 2025 and upon approval by the Denali Borough Assembly and signature of the Denali Borough Mayor.

DATE INTRODUCED: August 14, 2024
FIRST READING: September 11, 2024
PUBLIC HEARING: September 11, 2024

PASSED and APPROVED by the Denali Borough Assembly this 11th day of September, 2024.



CHRIS NOEL, MAYOR

ATTEST: 

AMBER RENSHAW, BOROUGH CLERK



VOTE: unanimous