

Chapter 6.56

SEVERANCE TAX

Sections:

- 6.56.010 Severance Tax Levied.
- 6.56.020 Definitions.
- 6.56.030 Exemptions.
- 6.56.040 Registration.
- 6.56.050 Accrual and Remittance of Tax.
- 6.56.060 Delinquencies and Penalties.
- 6.56.070 Tax as Lien.
- 6.56.080 Confidentiality of Records.
- 6.56.090 Recordkeeping and Audit.
- 6.56.100 Protest and Appeal.

6.56.010 Severance Tax Levied.

A. A severance tax is hereby levied within the City and Borough of Yakutat on any severer of natural resources, for the following activities:

1. Mining, extracting, harvesting, removing or producing for sale, profit or commercial use any copper, gold, silver, zinc, lead, molybdenum, or other metallic mineral product;

2. Felling, removing, or producing for sale, profit or commercial use any timber; and

3. Mining, quarrying, extracting, removing or producing for sale, profit or commercial use any gravel, sand, rock or coal.

B. The rate of tax for natural resources severed from lands within the Borough shall be as follows:

<u>Natural Resource</u>	<u>Amount of Levy</u>
Gravel/Sand/Rock/Coal	\$0.15 (fifteen cents) per ton
Timber	\$5.00 (five dollars) per mbf(thousand board feet)
Copper, gold, silver, zinc, lead, molybdenum, or other metallic mineral product	4%(four percent)of gross production value

C. The tax levied under this Chapter shall not apply to the severing of natural resources which is conducted under a contract executed prior to May 5, 2006, provided that the actual severance occurs prior to May 5, 2007.

6.56.020 Definitions.

A. "Borough" means the City and Borough of Yakutat.

B. "Calendar quarter" means any one of the following three month periods: December 1 through February 28/29; March 1 through May 31; June 30 through August 31; and September 1 through November 30.

C. "Gross Production Value" means the market value per unit at the point of severance, multiplied by the number of severed units of the natural resource.

D. "Lands within the Borough" includes all private, borough, state, federal, and native lands.

E. "Market Value per unit" is equal to the sale price per unit, as established by the first sale of the resource by the severer to an unrelated party. Under conditions wherein the sale price represents less than the true market value of the resource, the value of the resource shall be determined as nearly as possible according to the selling price of a resource of like quality or character.

F. "Point of Severance" means:

1. For gravel, sand, rock and coal, the scale at the pit, quarry or mine;
2. For timber, the yard scale; and
3. For metallic mineral product, prepared for transport at the mining site.

G. "severed units" means all units mined, harvested, produced, quarried, extracted, felled, or removed directly or contractually.

H. "severer" means a person, company, corporation or other entity engaged in the business of severing natural resources.

I. "severing of natural resources" is the conduct of any of the activities set forth in subparagraphs (A)(1) through (A)(3) of section 6.56.010.

J. "unit" means unit of measurement for a natural resource, as follows:

1. Ton, for gravel, sand, rock and coal;
2. board feet, for timber; and
- 3 standard unit utilized for commercial use or sale, for metallic mineral product.

6.56.030 Exemptions. The following activities are exempt from taxation:

A. The severance of gravel, sand, rock or coal in an amount less than 15,000 tons in a single calendar quarter.

B. The severance of timber in an amount less than 150 mbf in a single calendar quarter.

C. The severance of metallic mineral product, if the gross production value is less than \$18,750.00 in a single calendar quarter.

6.56.040 Registration. Every severer subject to taxation hereunder shall register with the Borough tax department prior to beginning a severance activity.

6.56.050 Accrual and Remittance of Tax.

A. Every severer subject to taxation under this Chapter shall accrue the taxes imposed by this ordinance at the time of sale. The tax imposed shall be shown on the bill of sale as a separate and distinct item.

B. The severance tax shall be paid quarterly. The severer shall on or before the last day of the month succeeding the end of each calendar quarter prepare a return for the preceding quarter, upon forms furnished by the Borough, and pay the tax due. In the event the last day of the month falls on a legal holiday, the return may be filed and payment made on the first business day following. Any tax not paid when due shall be deemed delinquent.

C. The return shall, at a minimum, contain the following information:

1. The legal description of the properties from which natural resources were severed, and the name, address and contact numbers of the owner(s) of the properties;

2. The name, address and contact numbers of the severer, and the severer's State of Alaska and Borough business license numbers;

3. The amount of units severed from all properties during the quarter, and, in the case of severance of metallic mineral product, the market value of those units; and

4. The name, address and contact numbers of the first purchaser(s) of the resource, and the number of severed units purchased by each such purchaser.

D. The return shall be signed and its completeness and accuracy sworn to by the severer under penalty of perjury.

E. Amounts received with the return shall be applied in the following order:

1. penalties due, beginning with the oldest penalty;
2. interest due, beginning with the interest due on the oldest quarter; and
3. tax due, beginning with the tax due from the oldest quarter.

F. Any severer, whose return and payment for any quarter is timely, is entitled to a discount, equal to ten percent (10%) of the tax due or the sum of one thousand dollars, whichever is less, in the form of a deduction from the amount of the tax due, provided that:

1. The severer files a return and remits the tax due in compliance with all other provisions of this Chapter; and
2. The severer does not exhibit a manifest failure to maintain proper accounting records and returns of the tax due.

#### 6.56.060 Delinquencies and Penalties.

A. A penalty equal to fifteen percent (15%) of the tax due shall be imposed upon delinquency.

B. In addition to the penalty provided above, interest shall accrue at the rate of fifteen percent (15%) per annum on the delinquent tax from the date of delinquency until paid in full.

C. If a severer fails to make payment in accordance with this Chapter, the Borough Finance Director may, in addition to any and all other remedies available by law, make an assessment of the tax due against the severer, with the assessment based upon historical data and the best information available, and institute civil action to recover the amount of the tax.

D. Knowingly failing to file a tax return required under this Chapter, or knowingly making a false statement on a tax return relative to the amount, location, kind or value of activities subject to taxation, shall constitute a violation of the Code of the City and Borough of Yakutat and shall be punishable by a penalty of not more than One Thousand Dollars (\$1,000.00) which may be imposed in addition to injunctive and compensatory relief. Each day that a violation continues constitutes a separate violation.

6.56.070 Tax as Lien. The tax, interest and any penalties imposed under this Chapter, and any administrative costs, including attorney fees and litigation costs, incurred by the Borough to collect the tax, shall constitute a lien in favor of

the Borough upon all the real and personal property of the severer. The lien arises upon delinquency and continues until the liability is satisfied or the lien is foreclosed. A notice of lien may be filed in the office of the recorder for the Juneau Recording District. The Borough may also, at its discretion, file a notice of lien in any other recording district. The lien may be foreclosed by the Borough in the same manner as any other lien against real or personal property. These lien rights are in addition to, and not in lieu of, any other legal remedies available to the Borough.

6.56.080 Confidentiality of Records. All tax returns filed under this Chapter, all data obtained from such tax returns, and all financial information obtained from an inspection of records or audit conducted under this Chapter are confidential and may not be released by the Borough except upon court order or when necessary to enforce the provisions of or to collect the taxes due under this Chapter. The Borough may publish at any time the names of delinquent taxpayers and the amounts and periods of delinquency.

6.56.090 Recordkeeping and Audit.

A. A severer shall retain for a period of six years all reports, returns, forms, records and supporting schedules as may be required by the Borough.

B. The Borough Finance Director may from time to time cause to be performed an audit of any individual or entity conducting or believed to be conducting severance activities within the Borough. Under this audit, the Borough may examine the books, records and files of any severer or purchaser, and conduct hearing(s) and compel the attendance of witnesses thereat.

C. Upon written notification and request by the Borough, mailed to the severer at the severer's last known address, a severer shall present at a specified date and time and deliver to the Borough the books, papers, records and any other documentation of the activities as requested. Said documents may include, but are not limited to, the following: Sales journals, production reports, general ledgers, bank statements, income statements, balance sheets, charts of account, and federal and/or state income tax returns.

D. Failure by the severer to comply with the provisions of paragraph C above shall constitute a violation of the Code of the City and Borough of Yakutat and shall be punishable by a penalty of not more than One Thousand Dollars (\$1,000.00) which may be imposed in addition to injunctive and compensatory

relief. Each day that a violation continues constitutes a separate violation.

6.56.100 Protest and Appeal.

A. If a severer believes that a transaction is exempt or otherwise not subject to the tax imposed under this Chapter or believes that a penalty or interest is not owing, but has been informed by the Borough that such transaction is subject to the tax imposed under this Chapter or such penalty or interest is owing, the person may protest the tax, penalty or interest by paying the sums the Borough states are owed and filing with the Borough at the time of such payment a statement of protest setting out all relevant facts and clearly explaining why the severer believes the transaction is not subject to this Chapter or the penalty or interest should not be imposed. The payment and statement of protest must be received by the Borough on or by the date the tax or charge is otherwise due under 6.56.050. Failure to file a statement of protest and to pay the amount claimed by the Borough as owing within the time permitted under this subsection constitutes a waiver of the right to protest the tax or charge under this Chapter and is a waiver of the right to appeal the protest, or to appeal or otherwise challenge the tax or charge in any judicial or other proceeding.

B. The Borough Manager shall issue a written ruling on each severer protest within thirty (30) days of receipt of the protest by the Borough. The person from whom the tax is due has the burden of proof. The Borough Manager may permit or require the protestor to provide additional information relevant to the protest. The ruling must set forth the reason for the grant or denial of the protest. The ruling will be sent to the protestor at the address given on the protest, and shall be effective upon mailing.

C. If a protest is granted, the Borough Manager shall cause to be refunded to the person the tax or other charge paid to the Borough that was not subject to the tax or charge levied.

D. If a protest is denied, the protestor may, within thirty (30) days of the date of the notice of denial, request that the protest be referred to the Borough Assembly. The Assembly shall receive such additional information, whether written or oral, as the protestor may desire to present. The Borough shall render a decision in writing to the protestor. A protestor who is dissatisfied with the Assembly's decision may appeal that decision to the superior court within thirty (30) days of issuance of that decision, and otherwise in accordance with the Alaska Appellate Rules of Procedure. The protestor's

failure to timely appeal in accordance with those rules constitutes a waiver of appeal rights and the Assembly's decision becomes final.

