

**AN ORDINANCE OF THE HAINES BOROUGH ADDING HAINES BOROUGH CODE CHAPTER 3.82 TO IMPOSE AN EXCISE TAX ON TOBACCO PRODUCTS IN THE HAINES BOROUGH.**

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. Section 4 of this ordinance is of a general and permanent nature and shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance shall be effective January 1, 2018.

Section 4. Addition of Section 3.82 Haines Borough Code, as follows:

**3.82.010 Purpose and intent.**

It is the intent and purpose of this chapter to provide for the collection of excise tax to raise revenue for the Haines Borough. To that end, the scope of the tax levied shall be broadly interpreted and exemptions shall be allowed only when an exemption is clearly defined in this chapter.

**3.82.020 Definitions.**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. "Cigarette" means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than pure or nearly pure tobacco. A pack of cigarettes is a rectangular container, mostly of paperboard, which generally contains 20 cigarettes.
- B. "Distributor" means a person who brings or transports cigarettes or other tobacco products, or causes them to be brought or transported, into the Haines Borough for the purposes of sale, or for distribution to others for resale, within the Borough.
- C. "Other tobacco product" means and includes:
  - 1. A cigar;
  - 2. A cheroot;
  - 3. A stogie;
  - 4. A perique;
  - 5. Snuff and snuff flour;
  - 6. Smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;
  - 7. Chewing tobacco, including cavendish, twist, plug, scrap, and tobacco suitable for chewing;
  - 8. A vapor product; and
  - 9. An article or product made wholly or in part of tobacco or a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption.

Other tobacco product excludes a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose.

- D. "Person" is specifically intended to include individuals who are employees, members, directors, agents or officers of any of such entities who are under a duty to perform an act concerning which a violation of this chapter could occur.
- E. "Sale" means a sale, barter, exchange, and every other manner of transferring the ownership of personal property.
- F. "Vapor product" means any vapor cartridge or other similar container which contains nicotine in a solution or other form that is intended to be used with an electronic cigarette or similar vapor producing device. It also includes an electronic cigarette kit when the kit contains vapor cartridge(s) and a disposable electronic cigarette or similar device sold for one time use.
- G. "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a distributor or other person, after deduction of a discount or other reduction received by the distributor for quantity or cash.

### **3.82.030 Levy of excise tax on Tobacco Products - rate**

- A. The Haines Borough hereby levies an excise tax of \$2.00, on each pack of cigarettes brought or transported into the Haines Borough after December 31, 2017.
- B. The Haines Borough hereby levies an excise tax of 45 percent of the wholesale price on other tobacco products, other than cigarettes, brought or transported into the Haines Borough after December 31, 2017.

### **3.82.040 Exemptions.**

The tax imposed under this chapter does not apply to Cigarettes, other tobacco products or marijuana if the United States Constitution, the Alaska Constitution, or other federal or state laws prohibit the levying of the tax on the product by the Haines Borough.

### **3.82.050 Registration.**

- A. All distributors must register with the Haines Borough and obtain a certificate of registration prior to selling, purchasing, possessing, bringing or transporting cigarettes or other tobacco products into the Haines Borough. The registration shall be on a form provided by the borough and must be completed in full. Registration constitutes the distributor's consent to the borough's filing of a lien on real and personal property for delinquent taxes and related interest, penalties and administrative fees and costs.
- B. The registration required by this chapter is in addition to any other registration or license required by law.
- C. The nonrefundable fee for registration or renewal is \$50.00. A certificate is subject to renewal every five years.
- D. A distributor shall display the certificate of registration prominently at their place of business. A certificate of registration is not assignable or transferable.
- E. The borough may suspend or revoke a certificate of registration if a distributor fails to comply with the provisions of this chapter.

- F. Any appeal from the borough's failure to issue or renew a certificate of registration, or the borough's suspension or revocation of a certificate, must be filed within 30 days of the date of mailing of the borough's notification to the distributor.

**3.82.060 Quarterly returns; penalties and interest for delinquency.**

Every distributor shall, on or before the last day of the month succeeding the end of each quarter year ending March 31, June 30, September 30 and December 31, complete an excise tax return for the preceding quarter year upon forms to be furnished by the Borough, and sign and transmit the return to the Borough manager. The return must include a total count of the number of packs of cigarettes and the wholesale price of the other tobacco products brought into the Borough during the preceding quarter, the amount of excise tax due, and other information and supporting documentation as the Borough may require.

**3.82.070 Delinquency; failure to submit return or to remit taxes.**

- A. Whenever the Borough manager reasonably believes a return contains inaccurate reporting or whenever any distributor has become delinquent in the submission of the required quarterly return or in remitting the excise tax, the Borough manager shall mail to the delinquent distributor's last known address a written demand by certified mail, return receipt requested, for submission of the corrected or required excise tax return and remittance within ten days. In the event of noncompliance with such demand, the Borough manager may make an excise tax assessment against the delinquent distributor, the assessment to be based on an estimate of the taxable wholesale price paid by the distributor during the quarterly period in question. A copy of the assessment shall be sent to the distributor at their last known address by certified mail, return receipt requested. The distributor shall have a right to a hearing before the manager at which time the distributor shall make available for examination the books, papers, records and other documents pertaining to the period involved in the assessment. The distributor may exercise the right to a hearing by delivering to the manager within 15 days of the date the notice was mailed, a written request for a hearing. The manager shall establish a date and time for a hearing to be held within ten days of receipt of the request unless a later time is mutually agreeable. The person conducting the hearing shall issue an amended assessment if it is determined that an amendment should be made. The amended assessment, or the original assessment if no amendment is made within five days of the hearing, shall be the final assessment for the purpose of determining liability to the Borough. If no timely request for a hearing is made, the original assessment shall be the final assessment 30 days after the mailing of the notice of the original assessment, unless the seller has submitted an accurate return within the 30 days.
- B. The Borough may file a civil action for collection of any taxes, penalty or interest due after making a demand or assessment under subsection (a) of this section.
- C. Whenever any distributor fails to submit the required quarterly return after notice given as provided in subsection (a) of this section, the manager shall require such distributor to submit returns on a monthly basis.

**3.82.080 Records maintenance and inspection.**

In order to facilitate the administration and enforcement of the provisions of this chapter, each distributor shall maintain and keep for a period of three years all of the quarterly excise tax returns, reports, forms and other records prescribed by this chapter or as prescribed hereafter by the Borough manager. The manager, or the manager's designee, is specifically authorized and empowered to examine and inspect at all reasonable hours the books, records and other documents of any distributor, including their state business license, in order to carry out the provisions of this chapter.

**3.82.090 Sale of Business; final tax return; liability of purchaser.**

- A. If a distributor sells, assigns, transfers, conveys, leases, forfeits or abandons the business to another person, the distributor shall make a final excise tax return within 15 days after the date of selling, assigning, transferring, conveying, leasing, forfeiting or abandoning the business showing that all tax obligations imposed by this chapter have been paid. The purchaser, successor, transferee, lessee, assignee, creditor or secured party shall withhold a sufficient portion of the purchase money to pay the amount of any excise taxes, penalties and interest as may be due and unpaid to the Borough. If the purchaser, assignee, transferee, lessee, successor, creditor or secured party fails to withhold from the purchase money, or fails to otherwise provide for or make the payment of the taxes, interest and penalty owed by the business as provided in this chapter, the purchaser, assignee, transferee, lessee, successor, creditor or secured party shall be personally liable for the payment of the taxes, penalties and interest accruing and unpaid to the Borough on account of the operation of the business of any former owner, owners, operators or assigns.
- B. Before the sale, lease, assignment, transfer, or other disposition of the business is completed, the distributor shall file with the Borough manager an informational notice identifying the name and address of each person or entity involved in the transaction, the nature of the transaction, and the effective date of the transaction.

**3.82.100 Lien for tax, interest and penalties due.**


The tax, interest and penalty imposed under this chapter shall constitute a lien in favor of the Borough upon the assets or property of the distributor within the Borough. The lien arises upon delinquency and continues until liability for the amount is satisfied or the property of the delinquent distributor is sold at a tax lien foreclosure sale. The lien is not valid as against a mortgagee, pledge, purchaser, or judgment creditor until notice of the lien is filed in the recorder's office for the Haines Recording District.

**3.82.101 Penalty for violation.**

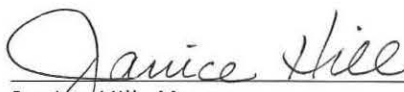
A violation of any of the provisions of this chapter is a misdemeanor.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS 10<sup>th</sup> DAY OF OCTOBER, 2017.

ATTEST:

  
Julie Cozzi, MMC, Borough Clerk



  
Janice Hill, Mayor

Date of Introduction: 07/11/17  
Date of First Hearing: 07/25/17  
Date of Second Hearing: 08/08/17  
Date of Third Hearing: 09/26/17  
Date of Fourth Hearing: 10/10/17