

CLERK'S OFFICE
APPROVED
Date: 7-15-03

Submitted by: Chair of the Assembly at the
request of the Mayor
Prepared by: Department of Finance
For reading: June 24, 2003

ANCHORAGE, ALASKA
AO No. 2003-107

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 12.45, RENTAL TAX ON RENTAL OF MOTOR VEHICLES, TO CLARIFY RENTAL AGENCY RESPONSIBILITIES, PROVIDE ASSURANCE THAT TAXES COLLECTED BY RENTAL AGENCIES WILL BE REMITTED TO THE MUNICIPALITY, INCREASE THE SEVERITY OF CONSEQUENCES FOR FAILURE TO COMPLY WITH REQUIREMENTS, AND REVISE TERMINOLOGY FOR PRECISION AND CONSISTENCY.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code section 12.45.030 is hereby amended to read as follows:

12.45.030 Tax receipts segregated and held in trust for the Municipality.

Taxes collected pursuant to this chapter belong to the municipality at the time collected by the rental agency. The rental agency has a fiduciary duty to the municipality for these taxes. The taxes [TAXES] shall be segregated from the rental agency's funds, at least by book account, and held in trust for the exclusive benefit of the municipality until remitted to the municipality.

Section 2. Anchorage Municipal Code subsection 12.45.050A. is hereby amended to read as follows:

12.45.050 Registration of rental agencies.

- A. [EACH RENTAL AGENCY CONDUCTING BUSINESS ON JULY 18, 2000 SHALL REGISTER WITH THE CHIEF FISCAL OFFICER ON A FORM PROVIDED BY THE DEPARTMENT NOT LATER THAN SEPTEMBER 16, 2000. A] Each rental agency [COMMENCING OPERATIONS AFTER JULY 18, 2000] shall register with the chief fiscal officer on a form provided by the department before such rental agency rents or leases a motor vehicle. An applicant applying for a certificate of registration under this chapter shall obtain a surety bond in accordance with section 12.45.055 and a copy of such surety bond shall be submitted to the Department with the application.

Section 3. Anchorage Municipal Code section 12.45.050 is hereby amended by adding a new subsection to read as follows:

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- G. The department may refuse to issue a certificate of registration if there is reasonable cause to believe that the applicant has structured its business organization to avoid payment of delinquent taxes, penalties, interest, or costs due under this chapter; has willfully withheld information requested to determine the applicant's eligibility to receive a certificate; or there is reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.

Section 4. Anchorage Municipal Code chapter 12.45 is hereby amended adding a new section to read as follows:

12.45.055 Security for fiduciary performance.

- A. Guarantee required. To ensure that a rental agency performs its fiduciary responsibility to timely collect, account for, safeguard, and remit taxes levied by this chapter, the rental agency shall provide a guarantee by one or more of the methods specified in this section. The amount of the guarantee shall be in an amount that the chief fiscal officer determines to be 8% of the estimated average annual gross fees and costs earned by the rental agency, or \$5,000, whichever is higher. Except as specified in subsection C. of this section, the requirement for a guarantee shall remain in force for the entire period the applicant is registered as a rental agency in accordance with section 12.45.050. A certificate of registration is automatically revoked when the rental agency's required guarantee lapses, is not renewed, expires, is modified without the written consent of the chief fiscal officer, is cancelled, or is otherwise terminated. In the event the municipality exercises a claim against the guarantee, the rental agency shall provide an additional guarantee, in an amount equal to the amount of the paid claim, no later than 30 days after the date such claim was paid or its certificate of registration shall be automatically revoked.
- B. Methods. The rental agency shall include one or more of the following methods to guarantee performance of its fiduciary responsibilities at the time of application for a certificate of registration:
- 1 Surety bond. The rental agency may elect to provide a surety bond, in an amount defined in subsection A. of this section, from a company authorized to do such business in the state. The bond shall be in a form acceptable to the municipal attorney. The bond shall be payable to the municipality and shall be conditioned upon payment in full of the tax, including penalties and interest due and to become due and owing to the municipality by said rental agency during the effective period of the bond under the provisions of this chapter. The surety may terminate this bond, except as to any liability already incurred or accrued, and may do so upon giving the rental agency and the chief fiscal officer written notice to that effect. The surety shall provide written notice to the chief fiscal officer not less than thirty days before the expiration, non-renewal, lapse, termination, or other similar event affecting such

surety bond. Thirty days after receipt by the chief fiscal officer of such notice or upon a later date specified in the notice, or upon the filing and acceptance of a new bond, the existing bond shall terminate and be of no more force and effect, except as to any liabilities or indebtedness incurred or accrued thereunder as of the date of termination.

2. Deposit in escrow. The rental agency may elect to deposit a cash sum, in an amount defined in subsection A. of this section, either with the municipality or in escrow with a responsible financial institution authorized to do such business in the state. In the case of an escrow account, the rental agency shall file with the municipality an escrow agreement which includes the following terms:

a. Funds of the escrow account shall be held in trust until released by the municipality and may not be used or pledged by the rental agency as security in any matter during that period other than payment of the tax, penalties, and interest due and to become due and owing to the municipality under this chapter.

b. In the case of a failure on the part of the rental agency to remit taxes due under this chapter by the required due date, the institution shall immediately make all funds in such account available to the municipality for use in satisfying those taxes due, along with any related penalties and interest as provided for in this chapter.

3. Letter of credit. The rental agency may elect to provide, from a bank or other responsible financial institution authorized to do such business in the state, a letter of credit in a form acceptable to the municipal attorney. Such letter shall be filed with the municipality and shall certify the following:

a. That the financial institution irrevocably guarantees funds in an amount defined in subsection A. of this section.

b. That in the case of failure on the part of the rental agency to remit taxes due under this chapter by the required due date, the financial institution shall pay to the municipality immediately and without further action such funds as are necessary to satisfy those taxes due, along with any related penalties and interest as provided for in this chapter, up to the limit of credit stated in the letter.

C. Once a rental agency has filed a tax return and remitted the full amount of taxes due under this chapter, by the due date prescribed by this chapter, for each of eight consecutive calendar quarters, the rental agency may submit a written request to the chief fiscal officer for a waiver of the requirement for the rental agency to post a guarantee. Except as listed below, the chief fiscal officer shall provide written approval of such request, stating the date the requirement for a guarantee shall expire.

1 The chief fiscal officer shall not approve the rental agency's request and the

12.45.110 Tax Lien.

- A. Taxes due and not paid on the date required by this chapter, together with all interest, penalties and costs accruing thereafter, [IMMEDIATELY AFTER THE DATE SUCH TAXES BECOME DUE AND UNPAID,] shall immediately become a lien in favor of the municipality upon all of the rental agency's [TAXPAYER'S] real and personal property including rights to property. Such lien shall continue until all taxes, penalties, interest and costs due the municipality have been paid or the lien released in whole or in part.
- B. A separate notice of such lien shall be given each rental agency [TAXPAYER] liable for the taxes by [CERTIFIED] mail, to the address provided in the application for certificate of registration, and shall be recorded in the Anchorage Recording District, Third Judicial District, State of Alaska and any other recording district the department may choose.
- C. Notice of the lien shall specify the rental agency [TAXPAYER(S)] liable for payment of the tax, the tax amount and due date, a statement of the interest, penalties and costs accrued and which may thereafter accrue, the tax period for which the taxes were due and such other information as the department may determine or as may be required by law.

(The remainder of this subsection is not affected by this ordinance and is therefore not set out.)

Section 8. Anchorage Municipal Code section 12.45.120 is hereby amended to read as follows:

12.45.120 Penalties.

- A. A rental agency who fails to file a tax return within seven calendar days following its due date shall automatically incur a civil penalty for each tax return not filed equal to ten [SIX] percent of the taxes actually due the municipality for each violation of this subsection. A rental agency who fails to remit the full amount of taxes due within seven calendar days following its due date shall automatically incur a civil penalty equal to ten [SIX] percent of the taxes actually due the municipality but remaining unpaid for each violation of this subsection. If a person fails to pay the full amount of taxes due or file a tax return required under this chapter within 16 calendar days after its due date, each of the aforementioned [THE] civil penalties [FOR A TAX RETURN NOT FILED OR TAXES NOT REMITTED UNDER THIS CHAPTER WITHIN 16 CALENDAR DAYS AFTER ITS DUE DATE,] shall be automatically increased from ten [SIX] percent to twenty-five [FIFTEEN] percent [OF THE TAXES DUE THEREAFTER].

- D. The department may revoke a certificate of registration issued under this chapter for any violation of this chapter. If a rental agency fails to remit substantially all (at least 95%) of the taxes due under this chapter within 45 calendar days of the due date, the department shall revoke the rental agency's certificate of registration issued under this chapter and the rental

agency shall incur a civil penalty up to and including an amount equal to the unpaid delinquent taxes.

- E. A managing member, officer, director, and owner of an enterprise engaged in business as a rental agency without a certificate of registration issued under this chapter is personally liable for all taxes which should have been collected and remitted to the municipality plus a penalty equal to 25% [TEN PERCENT] of the tax which should have been collected in addition to all costs, taxes, interest and other penalties due under this chapter. The municipal attorney may petition the court for injunctive relief against a person engaged in business as a rental agency without a certificate of registration issued under this chapter.

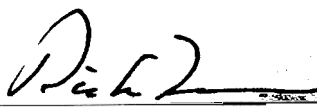
Section 9. Anchorage Municipal Code section 12.45.120 is hereby amended by adding a new subsection to read as follows:

12.45.120 Penalties.

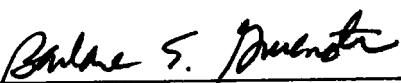
- G. Any person who violates any provision of this chapter shall be liable for a civil penalty of up to \$1,000.00 for each separate violation. Where multiple instances of the same violation occur, each instance shall constitute a separate violation.

Section 10. This ordinance shall become effective on July 1, 2003.

PASSED AND APPROVED by the Anchorage Assembly this 15th day of July, 2003.


Chair

ATTEST:


Municipal Clerk

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects - General Government

AO Number: 2003-107

Title: Providing Security for Collection of Taxes under
 AMC 12.45 – Rental Tax on Rental of Motor Vehicles.

Sponsor: Mayor

Preparing Agency: Department of Finance **Others Impacted:** None

CHANGES IN EXPENDITURES AND REVENUES: (Thousands of Dollars)

ITEM	FY03	FY04	FY05	FY06	FY07
Operating Expenditures					
1000 Personal Services					
2000 Supplies					
3000 Other Services					
4000 Debt Service					
5000 Capital Outlay					
TOTAL DIRECT COSTS:	0	0	0	0	0
6000 IGCs	0	0	0	0	0
FUNCTION COST:	0	0	0	0	0
REVENUES:	90,000	90,000	90,000	90,000	90,000
CAPITAL:	0	0	0	0	0
POSITIONS: FT/PT and Temp.	0	0	0	0	0

PUBLIC SECTOR ECONOMIC EFFECTS:

AO 2003-107 makes provisions to provide a substantial reduction in risk of loss of Municipal tax dollars. Risk of loss is inherent when tax dollars are collected from renters by local rental agencies on behalf of the Municipality, but the monies remain under the control of the rental agencies until they are remitted to the Municipality. Under AMC Chapter 12.45, title to the taxes vests in the Municipality upon collection, therefore rental vehicle taxes are not an expense of the rental agency; they are a fiduciary liability of the business until remitted to the Municipality.

From January 31, 2001 through December 31, 2002, four local rental agencies have failed to remit over \$176,000 in rental vehicle taxes, penalties, and interest because the tax dollars collected from renters were not available to be remitted to the Municipality when due. None of these rental agencies are currently under the protection of the bankruptcy court and lawsuits have been or will be filed by the Municipality against all of the businesses. These taxes, required by the code to be safeguarded by the businesses and held in trust for the Municipality, may not ever be collected by the Municipality.

The attached ordinance is expected to increase tax collections by approximately \$90,000 per year and substantially reduce costs otherwise associated with collection efforts by MOA against delinquent rental agencies. These expectations will be accomplished through the ordinance provisions for the Municipality to file a claim against a surety, or exercise against other security, for taxes, penalties, and interest in the event the rental agency fails to protect Municipal monies and is unable to remit them when due.

PRIVATE SECTOR ECONOMIC EFFECTS:

AO 2003-107 is not intended or expected to have an economic impact on local rental agencies that are currently registered with the Finance Department under AMC 12.45, Rental Tax on Rental of Motor Vehicles, and are in compliance with the requirements of this code. It should, however, provide them with comfort that their competitors will be remitting their fair share of taxes to the Municipality.

This ordinance will have a negative economic impact on new rental agencies and existing rental agencies that are acquiring additional locations, changing the name of the business, or making other changes which require the rental agency to apply for a new certificate of registration under AMC Chapter 12.45 if the business does not have a two-year history of compliance with this code.

Costs associated with a rental agency obtaining the surety bond required by this ordinance are expected to be nominal - in the range of 1 to 2% of the face amount of the surety bond. Other costs of non-compliance (various penalties) included in the ordinance are expected to be substantial and should have significant value as a deterrent to failure to comply with provisions of AMC Chapter 12.45.

Even though the costs to obtain a surety bond may be nominal, local bonding companies have indicated underwriters are not likely to sell surety coverage to operators with poor credit history. The attached ordinance provides alternatives, such as posting a cash bond or other security acceptable to the chief fiscal officer, for companies that are unable to acquire a surety bond.

These negative economic effects associated with increased or new penalties are totally avoidable by a rental agency. In addition, after achieving a two-year history of compliance with AMC Chapter 12.45, the requirement for a surety bond from the rental agency may be waived, thus eliminating any continued negative economic effect of this ordinance for compliant rental agencies.



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 537-2003

Meeting Date: June 24, 2003

From: Mayor

Subject: Providing security for the collection of rental vehicle taxes

AO 2003-107 amends Anchorage Municipal Code Chapter 12.45, Rental Tax on Rental of Motor Vehicles, by requiring a surety bond from all newly registered rental agencies, and any previously registered rental agencies whose certificates of registration have been revoked for lack of compliance with code requirements. Recent experience has shown that some local rental agencies authorized to collect rental vehicle taxes from their customers, the taxpayers, have failed to hold those monies in trust for the Municipality as required by AMC Chapter 12.45. When the due date for remitting those taxes to the Municipality arrives, the tax dollars are gone. If such rental agency is a corporation, the owners may have been unjustly enriched at the taxpayers' expense and will be sheltered with limited liability for paying the taxes due. Actions prescribed in this ordinance are advisable as a means of ensuring that the Municipality will not suffer the loss of tax dollars already paid by taxpayers due to neglect by a rental agency.

The fiduciary nature of the relationship between the rental agencies and the Municipality is recognized in the ordinance and accordingly, penalties for breach of fiduciary duty to collect, report, and remit rental vehicle taxes have been increased and expanded to reflect the higher standards of performance expected of this fiduciary responsibility. Rental agencies that have posted the surety bond will not be required to retain this security after they have established a two-year record of compliance with filing tax returns and remitting taxes due.

AO 2003-107 provides detrimental consequences that are totally avoidable by compliant rental agencies and should be a substantial deterrent to a rental agency considering to convert Municipal tax dollars for business or personal uses. New personal penalties levied against directors and officers may be a deterrent to neglect or non-compliance by corporate entities.

It is estimated that this ordinance will substantially reduce risk of loss of Municipal tax dollars that otherwise would be written off as uncollectible. Municipal personnel costs will not be reduced, but personnel formerly involved in collection efforts against delinquent rental agencies will be able to focus efforts on other delinquent taxpayers.

APPROVAL OF AO 2003-107 IS RECOMMENDED.

Prepared by: Kate Giard, Chief Fiscal Officer
Concurrence: Harry J. Kieling, Jr., Municipal Manager
Respectfully submitted: George P. Wuerch, Mayor

As 2003-107

Content Information

Content ID : 000306

Title: Providing Security for the Collection of Rental Vehicle Taxes, Finance Dept.

Author: pruittns

Initiating Dept: Finance

Description: ordinance, rental tax, motor vehicles, surety bond, rental agencies, fiduciary

Date Prepared: 10/14/02 4:21 PM

Director Name: Kate Giard

Mayor Review?: Yes

Requested Assembly Meeting Date 6/10/03 12:00 AM
MM/DD/YY:

Requested Public Hearing Date 6/24/03 12:00 AM
MM/DD/YY:

Workflow History

Workflow Name	Action Date	Action	User	Security Group	Content ID
AllOrdinanceWorkflow	10/14/02 4:47 PM	Checkin	pruittns	Public	000306
Finance_SubWorkflow	10/15/02 11:35 AM	Approve	giardkh	Public	000306
AllOrdinanceWorkflow	10/17/02 7:38 AM	Reject	frascaci	Public	000306
AllOrdinanceWorkflow	10/23/02 10:21 AM	Checkin	pruittns	Public	000306
Finance_SubWorkflow	10/23/02 10:44 AM	Approve	giardkh	Public	000306
OMB_SubWorkflow	10/25/02 3:39 PM	Approve	frascaci	Public	000306
AllOrdinanceWorkflow	12/23/02 10:50 AM	Reject	wheelerda	Public	000306
AllOrdinanceWorkflow	1/3/03 4:51 PM	Checkin	pruittns	Public	000306
AllOrdinanceWorkflow	1/9/03 2:09 PM	Reject	giardkh	Public	000306
AllOrdinanceWorkflow	1/9/03 2:23 PM	Checkin	pruittns	Public	000306
Finance_SubWorkflow	1/12/03 2:16 PM	Approve	giardkh	Public	000306
AllOrdinanceWorkflow	1/13/03 11:02 AM	Reject	leblancdc	Public	000306
AllOrdinanceWorkflow	5/14/03 9:54 AM	Checkin	pruittns	Public	000306
Finance_SubWorkflow	5/20/03 1:26 PM	Approve	giardkh	Public	000306
AllOrdinanceWorkflow	6/5/03 4:00 PM	Reject	leblancdc	Public	000306

2003 JUN 19 AM 9:18
M.O.
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