

CHAPTER 3.18
FISHERIES BUSINESS TAX

§ 3.18.010. 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:

"Borough" means the Bristol Bay Borough.

"Department" means the borough finance department.

"Filed" means the date of personal delivery to the borough or, if mailed, the date of the United States postmark.

"Fisheries business" means a person who engages in processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants.

"Fishery resource" means finfish, shellfish, and fish by-products, including but not limited to salmon, halibut, herring, flounder, crab, clam, cod, shrimp, and pollock.

"Floating fisheries business" means a fisheries business which is not a shore-based fisheries business; the term includes, but is not limited to, a shore-based fisheries business as defined in this section when it is removed from the borough.

"Person" means an individual, partnership, association, limited liability company, cooperative, corporation, or any group or combination acting as a unit.

"Processed" means heading, gutting, cleaning, filleting, canning, freezing, glazing, or otherwise preserving a fishery resource.

"Shore-based fisheries business" means a fisheries business operated from a facility which is permanently attached to the land, or operated from a facility which remains in the same location in the borough for the entire tax year.

"Taking" means pursuing, fishing, capturing, or harvesting a fisheries resource in any manner.

"Taxpayer" means a person subject to tax under Section 3.18.020 or 3.18.050 of this chapter.

"Value" means:

- A. The market value of the fishery resource as determined by the prevailing price paid to fishermen for the unprocessed fishery resource of the same kind and quality by fisheries businesses in the same region or market area where the fishery resource was taken if:
 1. The taking of the fishery resource is done in a boat owned or leased by a person who holds a direct marketing fisheries business license under AS 43.75.020(c); and
 2. The fishery resource was sold to a buyer other than a fishery business licensed

under AS 43.75.020(a);

- B. For fisheries resources other than those described in subsection A of this definition, the market value of the fishery resource if the taking of the fishery resource is done in company-owned or company-subsidized boats operated by employees of the company or in boats that are operated under lease to or from the company or other arrangement with the company and if the fishery resource is delivered to the company; in this subsection, "company" means a fisheries business, a subsidiary of a fisheries business, or a subsidiary of a parent company of a fisheries business; "company" does not include a direct marketing fisheries business licensed under AS 43.75.020(c); or
- C. For fishery resources other than those described in subsection A or B of this definition, the actual price paid for the fishery resource by the fisheries business to the fisherman, including, but not limited to, indirect consideration and bonus amounts paid for fuel, supplies, gear, ice, handling, tender fees, or delivery, whether paid at the time of purchase of the fishery resource or tendered as a deferred or delayed payment; in this subsection, "delivery" means:
1. Transportation of the fishery resource from the boat or vessel on which the product was taken to a tender; or
 2. If delivery was not to a tender, transportation of the fishery resource from the boat or vessel on which the product was taken to a shore-based facility in which delivery of the fishery resource is normally accepted.

"Vessel" means all watercraft powered, rowed, towed, or otherwise propelled, which are used for taking, delivering, processing, or selling a fishery resource within the jurisdiction of the borough.

"Weight" means the poundage of a processed fishery resource.
(Ord. 2019-06 § 3(part), 2019; Ord. 2020-03 § 3, 2020)

§ 3.18.020. Tax levied on fisheries business.

- A. A person engaged in a fisheries business is liable for and shall pay the tax levied by this section on the value of each of the following fisheries resources processed during the year at the rate of one and one-half percent: fisheries resources processed by a shore-based fisheries business, fisheries resources processed by a floating fisheries business, and fisheries resources processed under a direct marketing fisheries business license.
- B. For purposes of determining the value of a fishery resource on which a tax is levied under this section, the department may establish a presumption of market value for a fishery resource in a region or market area based on a volume weighted average of market values for the fishery resource reported on returns filed under this chapter or AS 43.75.030 by fisheries businesses operating in the region or market area. A taxpayer who appeals an assessment of taxes based on a presumption of market value determined by the department under this subsection may rebut the presumption with substantial evidence of:

1. The prevailing price paid to fishermen for the fishery resource of the same kind and quality by fisheries businesses in the same region or market area where the fishery resource was taken, if the taxpayer holds a direct marketing fisheries business license under AS 43.75.020(c) and the fishery resource on which the tax is levied is processed under that license; or
 2. The true market value of the fishery resources if the taking of the fishery resource is done in a company-owned or company-subsidized boat operated by employees of a fisheries business, a subsidiary of the fisheries business, or a parent company of the fisheries business.
- (Ord. 2019-06 § 3(part), 2019)

§ 3.18.030. Exemption for first fifty thousand pounds.

The first fifty thousand pounds of fishery resource processed by a taxpayer in a calendar year that would otherwise be subject to taxation under Section 3.18.020 or 3.18.050 of this chapter is exempt from such taxation.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.040. Filing return and payment of tax.

- A. A person subject to the tax shall file a return stating the value of fisheries resources processed during the license year, computed as required by this chapter, and such other information as the department prescribes by regulation. The return must show the state license number and must be signed by the taxpayer or an authorized agent. If a receiver, trustee, or assign is operating the property or business, that person shall file the return for the person. A tax due on the basis of such a return shall be collected in the same manner as if collected from the person of whose business the receiver, trustee, or assign has custody and control.
- B. The return shall be made on a calendar year basis and submitted to the department before April 1st after the close of the calendar year.
- C. The department may adopt regulations for the granting of a reasonable extension of time for filing and may grant an extension of time for filing.
- D. The tax shall be paid by April 30th after the close of the calendar year or shall be subject to the penalties under Section 3.18.120 of this chapter.
- E. Every person engaging or attempting to engage in a business for which a tax is imposed under this chapter shall keep records, make statements under oath, file returns, and comply with all regulations that the department may adopt.
- F. When the department considers it is necessary, it may require a person, by notice served upon the person, to file a return, make such statements under oath, or keep and display to it such records as it considers sufficient to show the tax for which the person is liable. If a person fails to file a return as prescribed by law or by regulation, or makes, willfully or otherwise, a false or fraudulent return, the department shall make the return from the information that it can obtain. A return

made by the department is prima facie good and sufficient for all legal purposes, and the taxpayer may be subject to penalties under Sections 3.18.130 and 3.18.170 of this chapter.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.050. Tax imposed on taking of fishery resource.

- A. A person taking, purchasing, or otherwise acquiring a fishery resource that has not been subject to the tax imposed in Section 3.18.020 of this chapter is subject to the tax levied in Section 3.18.020 of this chapter on the value of the fishery resource if the person:
1. Transports the fishery resource to a point outside the taxing jurisdiction of the borough for subsequent processing or sale outside the taxing jurisdiction of the borough;
 2. Sells the fishery resource outside the taxing jurisdiction of the borough; or
 3. Has the fishery resource processed by a fisheries business in the borough.
- B. The rate of tax that shall be paid by a person whose liability for the tax is established by this section is the rate of tax that would have been due under Section 3.18.020 of this chapter if the fisheries business that first actually and physically processed the fish had been liable to pay the tax.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.060. Duty of taxpayer and payment of tax.

A person subject to taxes under Section 3.18.050 of this chapter shall make a return stating the value of fisheries resources taken, purchased, or otherwise acquired during the license year for sale to fisheries businesses outside of the taxing jurisdiction of the borough computed as required by Section 3.18.040 of this chapter, and other information to carry out the provisions of Section 3.18.040 of this chapter as may be prescribed by the department. The return must contain the state license number and must be signed by the taxpayer or an authorized agent, under penalty of unsworn falsification in the second degree. If a receiver, trustee, or assign is operating the property or business, that person shall make the return for the person. A tax due on the basis of such return shall be collected in the same manner as if collected from the person of whose business the receiver, trustee, or assign has custody and control. The requirements for time and place of payment of tax, and the obligation to keep records and make the records available to the department are the same as those prescribed in Section 3.18.040 of this chapter.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.070. Regulations.

The borough manager may promulgate regulations to implement and administer this chapter.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.080. Assembly to rule on application of chapter.

Should a taxpayer under this chapter be in doubt as to the application of the chapter to an actual situation facing him or about to face him, the taxpayer may apply to the assembly for a ruling on the issue.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.090. Protest of tax–Procedure.

- A. In the event a taxpayer believes all or some portion of his or her fisheries business to be exempt, the taxpayer may secure from the department a certificate of protest, which shall be filled out by the taxpayer and delivered to the department with the amount of the disputed tax.
- B. The certificate shall show the respective names and addresses of the taxpayer, the nature of the claim of exemption, and such other information as may be prescribed by the department.
- C. The certificate of protest shall be delivered to the department within ten days prior to the date of the regularly called meeting of the assembly.
- D. The taxpayer shall be advised in writing of the date the protest will be heard.
- E. At the date of the next regularly called meeting of the assembly a public hearing will be held with an opportunity for the taxpayer and the department to be heard. If the taxpayer filing the certificate of protest fails to appear at the public hearing scheduled to hear that protest, the protest is deemed denied, and no further action on the protest will be taken by the assembly.
- F. No later than sixty days after receipt by the borough of the certificate of protest, the assembly will rule on the protest and send to the taxpayer a notice that his or her claim has been allowed or disallowed. If the claim has been allowed, a refund, with six percent annual interest from the date of receipt of tax moneys, shall be remitted with the notification. The decision of the assembly shall be rendered in writing and shall be final, subject to judicial review.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.100. Returns and information declared confidential–Exceptions.

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 such returns, and data obtained therefrom, shall be kept from inspection by all private persons, except as necessary to investigate and prosecute violations of this chapter.

Nothing contained in this section shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return or report filed by him, nor to prohibit the publication of statistics so classified as to prevent the identification of particular taxpayers, nor to prohibit the furnishing of information on a reciprocal basis to other agencies of the state or the United States concerned with the enforcement of tax laws.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.110. Investigations and hearings authorized.

For the purpose of ascertaining the correctness of return, the assembly may hold investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records, or memoranda of any taxpayer and may require the attendance of any taxpayer, or any officer or employee of the taxpayer, at the hearing. The assembly may engage the professional services of an accountant or auditor to assist in the determination of the correctness of the returns.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.120. Failure to timely file a return.

A taxpayer who fails to file a return by the due date as required by this chapter, or who fails to remit taxes due by the due date, is subject to an initial penalty of ten percent of the tax due and an additional penalty of five percent per month.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.130. Falsification or misrepresentation of records—Penalties.

Falsification, unless demonstrated to be unwillful, or misrepresentation of any record required hereunder, subjects the person making such falsification or misrepresentation to a penalty two times the amount of any tax due or lost because of such falsification or misrepresentation.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.140. Refusal to allow inspection—Penalty.

The failure of a taxpayer to allow the inspection, at reasonable times, of records required to be kept by this chapter subjects the taxpayer to a penalty of three times the amount of any deficiency found or estimated to have occurred by the borough in the tax accounting of the taxpayer, if confirmed by an independent audit provided by the taxpayer.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.150. Maintenance of suits.

Nothing in Sections 3.18.120 through 3.18.140 of this chapter shall prevent the borough from filing and maintaining an action to collect any taxes due or which should have been collected in addition to any penalty assessed.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.160. Lien created.

The tax as imposed by this chapter together with all penalties and interest, and administrative and legal costs incurred, shall constitute a lien in favor of the borough upon all the taxpayer's real and personal property. The lien arises upon delinquency, and continues until the liability for the amount is satisfied or the property is sold at a foreclosure sale. The lien has a priority as allowed by AS 29.45.650(e). The lien is not

valid until notice of the lien is filed in the office of the recorder for the district in which the property is located.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.170. Criminal acts designated—Penalties.

A. Each of the following acts, unless determined to be unintentional, constitutes a misdemeanor, and is punishable by imprisonment for up to thirty days, and by a fine of up to three hundred dollars, in addition to any civil penalty assessed:

1. Failure to file a return or failure to remit taxes due;
2. Falsification or misrepresentation of any record filed with the borough or required to be kept according to this chapter, if used to mislead borough tax authorities.

B. Each act listed in this section constitutes a separate offense and each day constitutes a separate offense for continuing crimes of omission or concealment.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.180. Sunset provision.

Unless renewed by the assembly, the provisions of Sections 3.18.010 through 3.18.180 of this chapter shall expire on April 30, 2026.

(Ord. 2019-06 § 3(part), 2019)

§ 3.18.300. Liability for tax.

A. A fisheries business in the borough shall file the return and pay the tax imposed by Section 3.18.020 of this chapter.

B. As described in Section 3.18.050 of this chapter, a person taking, purchasing, or otherwise acquiring a fishery resource that has not been taxed under Section 3.18.020 of this chapter shall file the return and pay the tax imposed by Section 3.18.050 of this chapter.

C. The tax imposed under Section 3.18.020 of this chapter does not apply to a fishery resource that becomes subject to tax under Section 3.18.050 of this chapter. The provisions of Section 3.18.020 of this chapter control and take precedence if a fishery resource, or the value of the fishery resource, is subject to both Sections 3.18.020 and 3.18.050 of this chapter.

D. The tax imposed under Section 3.18.020 of this chapter applies to a fishery resource that is first processed in the borough without regard to the final destination of the fishery resource.

(Ord. 2020-03 § 3, 2020)

§ 3.18.310. Return, payment and required information for tax under Section 3.18.020 of this chapter.

- A. Using the form provided by the department, a person subject to the fisheries business tax shall file a single return for all fisheries resources processed in the borough by a shore-based fisheries business, a floating fisheries business, or a direct marketing fisheries business licensed during the calendar tax year under Section 3.18.040 of this chapter. The return must specify each type of fisheries business processing in which the taxpayer engaged, the type of fishery resource processed, and all locations, including physical address if applicable, at which fishery resources were processed in the borough.
- B. On the form, a person shall state the following information:
1. The name of the person subject to the tax that is filing the return;
 2. The person's mailing address and physical address, if different;
 3. The person's federal employer identification number (EIN) or social security number (SSN);
 4. The calendar year covered by the return;
 5. The precise locations in the borough, such as cannery, cold storage, vessel, or processing plant, where fishery resources were processed, including a specification by weight and species of the fisheries resource processed at each location;
 6. For a fisheries business that operates from a freezer ship or other floating vessel, the name of the vessel, the date of arrival of the vessel in Alaska and in the borough, subsequent movement of the vessel from one location to another, the reason for the movement, and the date of departure of the vessel from the borough and Alaska for any reason;
 7. The person's Alaska fisheries business license number or Alaska business license number;
 8. The value of the processed fishery resources as calculated under Section 3.18.010 of this chapter;
 9. The amount of tax liabilities, payments, and exemption;
 10. A sworn statement, subject to penalties for perjury, that the information provided is true and accurate; and
 11. Other material required on the form.

(Ord. 2020-03 § 3, 2020)

§ 3.18.320. Return, payment and required information for tax under Section 3.18.050 of this chapter.

- A. Using the form provided by the department, a person subject to the fisheries business tax under the provisions of Section 3.18.050 of this chapter shall file a single return for the payment of taxes levied under that section during the calendar

tax year under Section 3.18.040 of this chapter. The return must specify the means of transporting the fishery resource outside the taxing jurisdiction of the borough, including the name of the vessel if applicable; to whom the fishery resource was sold, including name, address, and EIN or SSN of buyer; or the name of the fisheries business in the borough that processed the fishery resource, including address and EIN or SSN of the fisheries business. A copy of an invoice or receipt for each transaction must be submitted with a return required by this section.

- B. On the form, a person shall state the following information:
1. The name of the person subject to the tax that is filing the return;
 2. The person's mailing address and physical address, if different;
 3. The person's federal EIN or SSN;
 4. The calendar year covered by the return;
 5. The precise locations in the borough, such as cannery, cold storage, vessel, or processing plant, where fishery resources were sent to be processed, including a specification by weight and species of the fisheries resource processed at each location and an invoice or receipt of each transaction;
 6. For fisheries resources that are transported for processing or sale outside the borough's taxing jurisdiction, the identity of the means of transporting the fisheries resources, including the name of the vessel, if applicable; the species and weight of each fisheries resources being transported; and an invoice or receipt for each such transaction;
 7. For sales of a fishery resource outside the borough's taxing jurisdiction, the name, address, and EIN or SSN of the person or business to whom the sale is made; the species and weight of each fisheries resources sold; and an invoice or receipt for each such transaction;
 8. The taxpayer's Alaska fisheries business license number or Alaska business license number;
 9. The value of the processed fishery resources as calculated under Section 3.18.010 of this chapter;
 10. The amount of tax liabilities, payments, and exemption;
 11. A sworn statement, subject to penalties for perjury, that the information provided is true and accurate; and
 12. Other material required on the form.

(Ord. 2020-03 § 3, 2020)

§ 3.18.330. Request for extension of time to file return.

- A. Upon a showing of good cause beyond the control of the requester, the department

may grant reasonable extensions of time for the filing of the return from the due date. The extensions may not exceed ninety days in total.

- B. A request for an extension of time to file the return must be in writing, contain a full statement of the reasons supporting the request, and be received by the department no earlier than April 1st after the close of the tax year and no later than ten calendar days before the date the return is due, including extensions.
- C. If an extension of time for filing the return is granted, the return must be filed before the expiration of the period of the extension. A return filed after the period of the extension voids all extensions under this section.
- D. If an extension of time for filing the return is denied, the return must be filed by the later of:
 - 1. Ten calendar days after the date the notice of denial is mailed by the department; or
 - 2. The April 30th due date.

(Ord. 2020-03 § 3, 2020)

§ 3.18.340. Statement of value and records.

- A. The department may require a person, other than a fisheries business, who contracts with the fisheries business for fisheries resource processing, to furnish the department with a statement of value for the resource processed by that person. The statement of value must report the species of fisheries resources processed, the total pounds of each species, and the actual value by species, as determined in accordance with AS 43.75.290.
- B. The records of the fisheries business shall be open to audit by the department for purposes of verifying the values reported under subsection A of this section. The records of a person other than a fisheries business who furnishes a statement of value under subsection A of this section shall be subject to the same statute of limitations as the records of a fisheries business.

(Ord. 2020-03 § 3, 2020)

§ 3.18.350. Penalties.

A penalty assessed against a taxpayer under Sections 3.18.120 through 3.18.140 of this chapter must be paid by the taxpayer to the borough within sixty days of the date assessed unless the department determines that good cause exists to extend that deadline for a thirty-day period of time.

(Ord. 2020-03 § 3, 2020)