

**HB**

**293**

**The Community and Regional Affairs Committee will come to order.**

**Let the record reflect that it is \_\_\_\_\_am, May 3 ,2005.**

**Let the record reflect we have a quorum. Members present are**

- Representative Thomas
- Representative LeDoux
- Representative Kott
- Representative Neuman
- Representative Cissna
- Representative Salmon

**The first item on today's agenda is SB 142.** (Public testimony has been closed. I have listed it on the teleconference request as "listen only". We were waiting for Neuman to be OK with it.) Will of committee

**Next we will hear HB 293.** (Kaci is carrying this one) (On-line testimony, in-house testimony, close testimony, committee discussion, will of the committee)

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 293  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Borough Sales Tax Exemption RDU Comm Assist & Ec Dev (405)  
 Component Community Advocacy  
 Sponsor House Community & Regional Affairs  
 Requester House Community & Regional Affairs Component No. 2703

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation allows that a borough may wholly or partially exempt a source from a borough sales tax if it is already taxed by a city in the borough.

It would not create a fiscal impact on the operations of the department.

Prepared by: Michael Black, Director Phone 269-4535  
 Division Community Advocacy Date/Time 5/2/05 11:01 AM  
 Approved by: Edgar Blatchford, Commissioner Date 5/2/2005  
 Agency Commerce, Community, and Economic Development

# Alaska State Legislature

Rep. Gabrielle LeDoux  
Rep. Pete Kott  
Rep. Mark Neuman  
Rep. Sharon Cissna  
Rep. Woodie Salmon



State Capitol, Room 124  
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## COMMUNITY & REGIONAL AFFAIRS COMMITTEE

### Sponsor Statement for HB 293 Borough Sales Tax Exemption for a Source that is Taxed by a City in that Borough

Article X, Section 1 of the Alaska State Constitution states that the intent of that section is to "provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions."

House Bill 293 clarifies current statutory language to make it plain that a borough government may institute local tax exemptions and avoid the "stacking of taxes." Without this provision, cities within borough boundaries who chose to tax themselves may be subjected to "double taxation" should the borough decide to levy a borough wide tax. Under these circumstances, taxable entities may end up paying an 8% tax to the city and an additional 8% tax to the borough. This kind of double taxation severely affects the costs of doing business in those areas and goes against the public policy of Alaska.

It is within the purview of the borough assembly to choose to exempt certain areas from a borough wide tax in order to avoid double taxation. House Bill 293 clears up any remaining questions that may be left regarding the taxation exemption powers of borough governments. I strongly urge your support of this important piece of legislation.

TABLE 1

2004 Municipalities: Class, Populations and Tax Types - continued

Mun.	Type of Municipality	Population	Property Tax	Sales Tax	Special Tax
Hoonah	First Class City	850	No	5%	No
Hooper Bay	Second Class City	1,100	No	4%	No
Houston	Second Class City	1,300	Yes	2%	No
Hughes	Second Class City	84	No	No	No
Huaila	Second Class City	284	No	No	No
Hydaburg	First Class City	389	No	4%	No
Juneau, City & Borough of	Unified Home Rule	31,248	Yes	5%	7% Bed Tax/ 3% Liquor Tax/ \$.30/pack Tobacco Tx
Kachemak	Second Class City	478	Yes	No	No
Kake	First Class City	683	No	5%	No
Kaktovik	Second Class City	295	No*	No	No
Kaltag	Second Class City	223	No	No	No
Kasaan	Second Class City	57	No	No	No
Kenai	Home Rule City	7,123	Yes	3%	No
Kenai Peninsula Borough	Second Class Borough	51,398	Yes	2%	No
Ketchikan	Home Rule City	7,989	Yes	3.50%	8% Bed Tax
Ketchikan Gateway Borough	Second Class Borough	13,533	Yes	2%	4% Bed Tax
Kiana	Second Class City	408	No	2%	No
King Cove	First Class City	725	No	4%	4% Seafood Proc/Business Impact Tax-flat rate
Kivalina	Second Class City	388	No	NR	No
Klawock	First Class City	847	No	5.50%	8% Bed Tax
Kobuk	Second Class City	125	No	No	No
X Kodiak	Home Rule City	6,113	Yes	8%	5% Bed Tax
X Kodiak Island Borough	Second Class Borough	13,797	Yes	No	9.25 mill Severance Tax/5% Bed Tax
Kotlik	Second Class City	605	No	3%	No
Kotzebue	Second Class City	3,070	No	6%	8% Bed Tax/ 6% Alcohol Tax
Koyuk	Second Class City	341	No	2%	No
Koyukuk	Second Class City	108	No	No	No
Kupreanof	Second Class City	30	No	No	No
Kwethluk	Second Class City	709	No	5%	No
Lake & Peninsula Borough	Home Rule Borough	1,627	No	No	2% Raw Fish Tax/Guide Fees/8% Bed Tax
Larsen Bay	Second Class City	98	No*	3%	No
Lower Kalskag	Second Class City	267	No	NR	NR
Manokotak	Second Class City	405	No	2%	No
Marshall	Second Class City	385	No	4%	No
Matanuska-Susitna Borough	Second Class Borough	87,528	Yes	No	5% Bed Tax
McGrath	Second Class City	405	No	No	No
Mekoryuk	Second Class City	205	No	2%	No
Metlakatla	Federal Law	1,397	No	No	No
Mountain Village	Second Class City	753	No	3%	No
Napakiak	Second Class City	380	No	3%	No
Napaskiak	Second Class City	424	No	No	No
Nenana	Home Rule City	385	Yes	4%	No
New Stuyahok	Second Class City	491	No	No	No
Newhalen	Second Class City	171	No	2%	NR
Nightmute	Second Class City	229	No	2%	No
Nikolai	Second Class City	123	No	No	No
Nome	First Class City	3,414	Yes	5%	4% Bed Tax
Nondalton	Second Class City	218	No	NR	No
Noorvik	Second Class City	848	No	3%	No
X North Pole	Home Rule City	1,609	Yes	<del>4%</del>	No (raised to 4% 2004)
North Slope Borough	Home Rule Borough	7,228	Yes	No	No
Northwest Arctic Borough	Home Rule Borough	7,293	No	No	No
Nuiqsut	Second Class City	416	No*	No	No

Note: Municipal populations are from the State Department of Labor

\* Indicates that City does not levy property tax, but Borough in which City is located does

TABLE 1

2004 Municipalities: Class, Populations and Tax Types

Municipality	Type of Municipality	Population	Property Tax	Sales Tax	Special Tax
Adak	Second Class City	74	No	3%	2% Fuel Transfer Tax
Akhlok	Second Class City	51	No*	No	No
Akiak	Second Class City	348	No	No	No
Akutan	Second Class City	787	No	NR	NR
Alakanuk	Second Class City	663	No	No	No
Aleknagik	Second Class City	235	No	5%	5% Bed Tax
Aleutians East Borough	Second Class Borough	2,668	No	No	2% Raw Fish Tax
Allakaket	Second Class City	95	No	No	No
Ambler	Second Class City	291	No	3%	No
Anaktuvuk Pass	Second Class City	319	No*	No	No
Municipality of Anchorage	Unified Municipality	273,565	Yes	No	8% Bed Tax & Car Rental/15% Tobacco Tax/Aircraft (Rt)
Anderson	Second Class City	377	No	No	8% Utility Tax
Angoon	Second Class City	507	No	3%	3% Bed Tax
Aniak	Second Class City	541	No	2%	No
Anvik	Second Class City	105	No	No	No
Atka	Second Class City	94	No	No	2% Raw Fish Tax/ 10% Bed Tax
Atkasuk	Second Class City	228	No*	No	No
Barrow	First Class City	4,412	No*	No	No
Bethel	Second Class City	5,886	No	5%	3% Bed/5% Alcohol/5% Gaming/MVRT
Bettles	Second Class City	32	No	No	\$.02/gal. Fuel Transfer Tax
Brevig Mission	Second Class City	313	No	3%	No
Bristol Bay Borough	Second Class Borough	1,103	Yes	No	3% Raw Fish Tax/10% Bed Tax
Buckland	Second Class City	409	No	6%	No
Cheformak	Second Class City	434	No	2%	2% Raw Fish Tax
Chevak	Second Class City	883	No	NR	No
Chignik	Second Class City	81	No	No	1%salmon tax/1% other seafood
Chuathbaluk	Second Class City	102	No	No	No
Clarks Point	Second Class City	66	No	NR	No
Coffman Cove	Second Class City	164	No	No	No
Cold Bay	Second Class City	95	No	No	8% Bed Tax/\$.04/gal. Fuel Tax
Cordova	Home Rule City	2,298	Yes	6%	6% Bed Tax/8% Vehicle Rental Tax
Craig	First Class City	1,495	Yes	5%	6% Liquor Tax
Dearing	Second Class City	131	No	3%	No
Delta Junction	Second Class City	963	No	No	No
Denali Borough	Home Rule Borough	1,917	No	No	Sev. Tax 3.05/yd gravel-\$ .05 ton-coal-\$: Bed Tax 7%
Dillingham	First Class City	2,390	Yes	6%	10% Bed Tax / 10% Liquor Tax/6% Gaming
Diomedes	Second Class City	137	No	3%	No
Eagle	Second Class City	126	Yes	No	No
Eek	Second Class City	280	No	2%	No
Egegik	Second Class City	82	No	No	2% Raw Fish Tax
Ekwok	Second Class City	128	No	No	No
Elim	Second Class City	342	No	2%	No
Emmonak	Second Class City	768	No	NR	No
X Fairbanks	Home Rule City	29,002	Yes	No	8% Bed Tax/ 5% Alcohol Tax/ 8% Tobacco Tax
X Fairbanks North Star Borough	Second Class Borough	82,131	Yes	No	8% Bed Tax + 5% alcohol - 2004 vote
False Pass	Second Class City	69	No	2%	6% Bed Tax
Fort Yukon	Second Class City	560	No	3%	No
Galena	First Class City	744	No	3%	No
Gambell	Second Class City	647	No	3%	No
Golovin	Second Class City	156	No	No	No
Goodnews Bay	Second Class City	244	No	No	No
Grayling	Second Class City	182	No	No	No
Gustavus	Second Class City	473	No	2%	4% Bed Tax as of 4-1-04
Haines Borough**	Home Rule Borough	2,319	Yes	5.5%	4% Bed Tax/4% Tour Tax
Holy Cross	Second Class City	204	No	No	No
Homer	First Class City	5,865	Yes	3.50%	No

Note: Municipal populations are from the State Department of Labor

\*Indicates that City does not levy property tax, but Borough in which City is located does

\*\* The City of Haines and the Haines Borough consolidated in 2002, into a single Home Rule Government

## Municipal Sales Taxes

Alaska Statutes 29.45.650-710 authorize the levy of sales and use taxes at the municipal level. The statutes give broad authority to municipalities to levy taxes on sales, rents and services provided within the municipality. There are only a couple of limitations placed upon municipalities in regards to levying a sales tax. Orbital space facilities are exempt from the levy of sales tax and alcohol may not be taxed unless other items are similarly taxed. A borough may not levy a sales tax on food coupons, food stamps, or other types of certificates issued under the federal Food Stamp Act. A borough may not levy or collect a sales or use tax on (1) physical transfer of refined fuel, unless in connection with a sale or use in the borough, or (2) wholesale sales or transfers of fuel refined in the borough. A sale is in the borough if the fuel is delivered to the buyer in the borough. Local ordinance may grant other exemptions.

A general law municipality that levies a sales tax may levy a use tax on the storage, use or consumption of tangible personal property; however, the use tax rate must equal the rate of sales tax and may only be levied on buyers. These limits do not apply to home rule municipalities.

There are no limits by statute on the rate of levy for sales or use taxes for a municipality. Such taxes are defined in Title 43 as taxes imposed with respect to transfer for a consideration of ownership, possession or custody of tangible personal property or rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specific commodity or article or class of commodities or articles.

Title 29.45.810, exemption from municipal taxation, states that for a party to a contract approved by the legislature as a result of submission under the SGA, the property, gas, products and activities associated with such approved, qualified project are exempt, as specified in the contract, from all taxes identified in the Act that would be levied and collected by a municipality under state law as a consequence of the participation by the party in the approved project.

### Revenues by Tax Type

At an April 16, 2004 MAG meeting, there was general discussion of sales and use taxes and the differences between municipalities' taxes and tax rates, exemptions, administrative procedures, and transaction caps. There was discussion about sales/use tax restrictions during construction and/or operations. Finally, there was discussion about whether the administrative complexity or the administrative costs would be balanced by potential savings to a successful applicant.

The following tables show each municipality's tax types, tax revenues and percentage of total tax revenue by type. The information was taken from Alaska Taxable 2003.

#### Municipality of Anchorage

Tax	Tax Revenues	% of Total Tax
Property Tax	\$315,874,931	
General Sales Tax	0	
Bed Tax	\$ 11,007,248	
Alcohol Tax	0	
Tobacco Tax	\$ 5,349,091	
Other Special Use Tax	\$ 4,682,406 (car rental tax)	
Other Special Use Tax	\$ 202,860 (aircraft tax)	

**City of Delta Junction**  
No sales or special taxes

**City of Fairbanks**

Tax	Tax Revenues	% of Total Tax Revenues
Property Tax	\$8,078,192	
General Sales Tax	0	
Bed Tax	\$1,786,026	14.46%
Alcohol Tax	\$1,162,927.83	9.41%
Tobacco Tax	\$799,567	6.47%
Other Special Use Tax		

**Fairbanks North Star Borough**

Tax	Tax Revenues	% of Total Tax Revenue
Property Tax	\$68,013,870	
General Sales Tax	0	
Bed Tax 8%	\$1,305,822	2%
Alcohol Tax 5%	Effective July 1, 2004	
Tobacco Tax 8%	Effective July 1, 2004	
Other Special Use Tax		

**Haines Borough**

Tax	Tax Revenues	% of Total Tax Revenue
Property Tax	\$1,818,643	
General Sales Tax 5.5%	\$1,899,249	
Bed Tax 4%	\$ 101,683	
Alcohol Tax		
Tobacco Tax		
Other Special Use Tax 4%	\$ 191,192 (Tour Tax)	

**Kenai Peninsula Borough**

Tax	Tax Revenues	% of Total Tax Revenue
Property Tax	\$41,693,443	
General Sales Tax 2%	\$14,370,582	
Bed Tax	0	
Alcohol Tax	0	
Tobacco Tax	0	
Other Special Use Tax	0	

**City of North Pole**

Tax	Tax Revenues	% of Total Tax Revenue
Property Tax	\$ 755,335	
General Sales Tax 3%	\$1,336,630	
Bed Tax	0	
Alcohol Tax	0	
Tobacco Tax	0	
Other Special Use Tax	0	

### North Slope Borough

Tax	Tax Revenues	% of Total Tax Revenue
Property Tax	\$199,653,165	100%
General Sales Tax*	0	
Bed Tax	0	
Alcohol Tax	0	
Tobacco Tax	0	
Other Special Use Tax	0	

\*NSB receives a payment in lieu of taxes for economic development

### City of Seward

Tax	Tax Revenues	% of Total Tax Revenue
Property Tax	\$ 712,175	
General Sales Tax 3%*	\$2,165,566	
Bed Tax 4%	\$ 217,482	
Alcohol Tax	0	
Tobacco Tax	0	
Other Special Use Tax	0	

Effective April 1, 2003 the sales rate is 4%

### Skagway

Tax	Tax Revenues	% of Total Tax Revenue
Property Tax	\$1,148,146	
General Sales Tax 4%	\$2,531,977	
Bed Tax 8%	\$ 91,782	
Alcohol Tax		
Tobacco Tax		
Other Special Use Tax		

### Valdez

Tax	Tax Revenues	% of Total Tax Revenues
Property Tax	\$20,280,164	
General Sales Tax	0	
Bed Tax 6%	\$ 256,803	
Alcohol Tax	0	
Tobacco Tax	0	
Other Special Use Tax	0	

### Transactions Limits/Exemptions for General Sales Tax

Evaluating the cost/benefit of sales taxes requires discussing the various transaction limits and exemptions municipalities have in their sales tax code. A complete list of exemptions for all municipalities that levy a sales tax is attached.

**City of North Pole:** seventeen exemptions from sales tax. The transaction cap amount is \$200.00. With a 3% sales tax, the maximum tax per transaction is \$6.00.

**Haines Borough:** 31 exemptions from sales tax, no transaction limits, with the exception of the sale of construction materials and services exceeding \$10,000.00. Construction materials are defined as those items becoming a permanent part of the structure. Contractors may apply for a numbered sales tax exemption permit which exempts the purchaser from paying sales tax on the particular project.

The Haines Borough defines "retail sale" as any sale of real or tangible personal property, including barter, credit, installment and conditional sales, for any purpose other than resale in the regular course of business. The delivery of property in the Borough by a seller whose principal place of business is outside the Borough to a buyer or consumer is a retail sale made within the Borough if such retailer maintains any office, distribution, or sales house, warehouse or any other place of business, or solicits business or receives orders through any agent, salesperson, or other type of representation within the Borough.

**City of Skagway:** 22 exemptions from sales tax in code, no specific transaction limit. However, sales of building and construction materials exceeding \$2,500 for use on any one construction project approved by a city building permit and paid for by any one purchaser during any 12-consecutive month period is exempt from sales tax. In addition, contracts and subcontracts for any new construction and reconstruction services on projects and structures for industrial, commercial, residential, and nonprofit purposes are exempt.

**City of Seward:** 15 exemptions from sales tax. The sales tax is applied only to the first \$500 of each separate sale, rent or service transaction. A transaction involving payment for services or personal property to be rendered or delivered over a period of more than one month for a consideration in excess of \$500 shall be treated as several separate transactions.

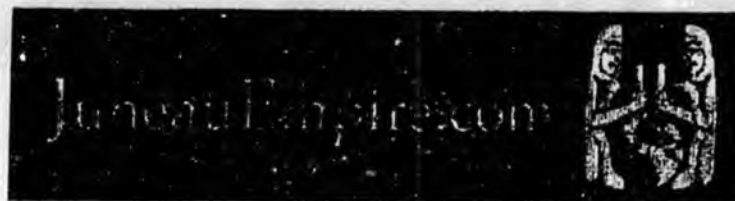
**Kenai Peninsula Borough:** approximately 22 exemptions from sales tax. Taxes are assessed on the first \$500 per transaction. KPB has an exemption for sales of building construction materials for owner/builders and only if the materials become part of the permanent structure. The borough charges a fee of \$100 for a tax exemption certificate for owner/builders.

On taxing jurisdiction, KPB code states the rate of tax to be added to the sale price is based on the place of sale, which for goods and merchandise is the location of the retail outlet; the same rule applies if the invoice includes a charge for installation. When goods are delivered into the borough from outside of the borough and the seller maintains an ongoing physical presence in the borough, the location of the seller's in-borough presence will determine the place of sale. If a seller has no ongoing physical presence in the borough but has established nexus with the borough, the point of delivery will determine the place of sale. If the seller has no ongoing physical presence in or nexus with the borough the sale is not subject to the borough sales tax. Nexus means the seller has established a connection within the borough by use of marketing techniques or sales, which establish or maintain a market for its goods in the borough.

#### **Other Points of Discussion**

In order to determine the cost/benefit of eliminating or modifying municipal sales/use taxes for purposes of a contract under the SGA, the following are items that may warrant further discussion:

- Materials/goods particular to gas pipeline project
- Point of sale for materials/goods
- Likely tax amount for applicant given sales tax rates, exemptions and transaction limits
- Cost of administration of modifying or exempting gas pipeline materials/goods/services from existing taxes
- Ease of expanding existing exemptions, i.e. construction materials, for gas pipeline materials/goods/services



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## Empire editorial: An untimely tax proposal

Sunday, August 22, 2004

Bar owners and anti-alcohol forces are loading their verbal weapons for a showdown Monday night at the Juneau Assembly meeting.

Some would like to see a ballot measure this October that would boost the alcohol sales tax from the 3 to 5 percent. That's in addition to the existing sales tax on all items, which means drinkers would be paying a 10 percent tax for a libation.

The arguments for and against stopping the ills of society through taxation are already flying. But moral arguments aside, this simply isn't the right time to holst the tax on spirits.

First of all, the city could end up spending a sizable chunk of change fighting for the tax in court, if the increase wins voters' approval. Fairbanks North Star Borough is tangled up in such a case that has made its way to the Alaska Supreme Court. Borough voters approved a 5 percent liquor tax last October, but business owners challenged the legality of it, based on a state law that restricts the imposition of taxes on alcohol.

Already, City Attorney John Hartle has recommended that revenue from a 5 percent alcohol sales tax in Juneau be set aside, rather than spent, because of the legal ambiguity. So it doesn't make sense to impose such a tax when it's unclear whether it will even fly in court.

Nor will the city be able to immediately benefit from this revenue. While alcohol-tax supporters say that this money could be used to offset the problems created by excessive drinking, the city does not know at this time if it's legally possible to use the increased funds for those purposes.

Second, the city has already put local bars through one major transition in the next few years - making them totally smoke-free by 2008. Banning smoking in all bars was the right thing to do, but it has many bar owners nervous they're going to struggle to keep customers.

Since three out of four Juneau residents don't smoke, it seems more likely that clientele in bars may shift from smokers to nonsmokers. But it's not going to be easy for bar owners to convince nonsmokers to frequent their newly smoke-free taverns if drink prices have jumped because of a tax hike.

This simply isn't the time to hit up one segment of Juneau's businesses for revenue that the city ultimately may not be allowed to touch.

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## Reasons and Rationale Supporting Double Taxation Exemption

The Fairbanks North Star Borough has both a bed tax and an alcoholic beverage tax that exempts sales to the extent they have already been taxed by the cities located within the Borough.

The Fairbanks North Star Borough is currently being forced to defend litigation, challenging the Borough's right to impose a sales tax (as approved by borough voters) with exemptions for sales already taxed by the City of Fairbanks and the City of North Pole. The plaintiffs assert in the litigation that the state statutory requirement of an areawide sales tax prohibits the Borough from exempting sales to the extent they have already been taxed by the 'cities.' In essence, the plaintiffs are arguing that current state law *requires* the Borough to impose a "piggyback" sales tax, effectively doubling the tax burden to residents purchasing within the cities.

Although the Fairbanks North Star Borough prevailed at the trial court level, the plaintiffs are appealing this matter to the Alaska Supreme Court. If the appeal is successful, the Borough will lose approximately 3.2 million dollars a year currently collected through its bed and alcoholic beverage tax. ?

because  
the ordinance  
could be drawn  
out of it.

The exemptions provided under the Borough's sales tax serve the public policy interest of avoiding double taxation. They also serve the Alaska Constitution's purpose to "provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions." [Art. X Section 1].

These exemptions further ensure that sales are uniformly taxed throughout the Borough so that consumers do not make purchasing decisions based upon the different tax rates they may otherwise encounter throughout the borough.

