

## Chapter 4.35

### RENTAL TAX ON RENTAL OF MOTOR VEHICLES

#### 4.35.010 Definitions.

(a) 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:

“Certificate of registration” means a license authorizing a specified person to operate a rental agency in the city.

“City” means the City of Saint Paul, Alaska, and includes all of the territory contained within a three nautical (geographical) mile perimeter and lying above the mean low water line surrounding St. Paul Island, Sea Lion Rock, Walrus Island and Otter Island of the Pribilof Group at Latitude 57° 10'N. and Longitude 170° 15'W.

“City manager” means the City Manager of the City of Saint Paul or a designee.

“Day means” a period of 24 consecutive hours or a portion thereof.

“Debt ratio” means a financial ratio that indicates the proportion of an entity's debt to its total assets and is calculated by dividing the total dollar value of an entity's liabilities by the total dollar value of an entity's assets.

“Debt-to-equity ratio” means a financial ratio indicating the relative proportion of an entity's equity and debt used to finance an entity's assets and is calculated by dividing the total dollar value of an entity's liabilities by the total dollar value of an entity's equity.

“Department” means the City of Saint Paul’s Finance Department.

“Fees and costs” means the value of all charges incurred by the renter, other than the tax prescribed by this chapter, for the use of a motor vehicle, regardless of whether paid in the form of money, property, or services, except for only the following items if separately stated on the rental contract or other document invoicing payment:

- (a) Fees from the sale of automobile liability insurance, loss damage waiver insurance, and personal accident insurance;
- (b) Parking tickets;
- (c) The amount of any sales tax, so-called "luxury tax", consumer excise tax, gross receipts tax, or other similar tax imposed by the United States, the State of Alaska, or the city;
- (d) Payments received by the rental agency from the renter or the renter's insurance provided for damage to a motor vehicle when the damage was incurred during the rental period;
- (e) Personal property other than items that are permanently affixed to the motor vehicle. Personal property does not include pickup truck shells or campers mounted on the motor vehicle, or trailers designed, constructed, or used primarily for dwelling;
- (f) Fueling charges; and

(g) Customer facility charges and customer facility maintenance charges set under AS 02.15.090.

“Fiduciary” means a person or responsible party acting on behalf of a rental agency, to whom the duties to collect, segregate and remit the taxes authorized by this chapter is entrusted for purposes specified in this chapter.

“Finance director” means the Finance Director of the City of Saint Paul or a designee.

“Funds: means money, assets or intangible assets that can be converted to money.

“Hosting platform” means a person or entity that provides a means through which any person engaged in the retail business of renting or leasing motor vehicles (i.e., rental agency) may offer a motor vehicle for rent. This service is usually provided through an online platform and generally allows a person engaged in the retail business of renting or leasing motor vehicles to advertise a motor vehicle for rent through a website provided by the hosting platform and provides a means for a motor vehicle renter to pay rent for the motor vehicle.

“Motor vehicles” for the purposes of this chapter is identified in City Code of Ordinance Chapter 10.10.

“Paid directly” means payment made by voucher, check, warrant, or other negotiable instrument made payable to the rental agency and issued from an account maintained by the person or entity entitled to the exemption or by a bill, invoice, purchase order, or other form of payment arrangement made directly between the rental agency and the person or entity entitled to the exemption.

“Person” includes an individual, company, partnership, limited liability partnership, joint venture, joint agreement, limited liability company, association, mutual or otherwise, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any combination acting as a unit.

“Recreational vehicle” for the purposes of this chapter is identified in City Code of Ordinance Chapter 10.10..

“Rental agency” means any person engaged in the retail business of renting or leasing motor vehicles.

“Responsible party” means a person who has a level of control over, or entitlement to, the funds or assets of the rental agency that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the rental agency and the disposition of its funds and assets.

“Retail business” means an activity consisting of a series of transactions sufficient in number, scope, and character to constitute an activity for which a person is required to hold a business license in Alaska and/or report business income or losses to Internal Revenue Service.

“Tax return” means the quarterly report to be submitted to the department as required by section 4.35.100. If a rental agency is required to submit a tax return on a monthly basis pursuant to section 4.35.180, then all references to quarter or quarterly in this chapter shall mean month or monthly, respectively, and all references to thirty days after the end of each calendar quarter shall mean the end of the following calendar month.

“Thirty (30) day period” means the first 30 consecutive days a motor vehicle as defined in this section is rented under a single contract.

“To rent or rent” (in any conjugation of the verb form) a motor vehicle means to acquire or sell the right to operate a motor vehicle or be responsible for the operation of a motor vehicle for a definite period of time.

“To lease or lease” (in any conjugation of the verb form) a motor vehicle means to acquire or sell the right to operate a motor vehicle or be responsible for the operation of a motor vehicle for a definite period of time.

#### 4.35.020 Motor vehicle rental tax.

(a) A tax of eight percent of the total fees and costs charged for the rental of a motor vehicle ("vehicle rental tax") is hereby levied on the retail rental of motor vehicles within the city.

(1) Transactions subject to this chapter include, but are not limited to, rentals entered into, as well as those under which the renter takes initial possession of the motor vehicle within the city.

(b) The motor vehicle rental tax shall be due, payable and collected from all persons renting a motor vehicle at the time the rental fees and charges are collected by all persons engaged in the retail business of renting motor vehicles. The tax shall be stated as a separate item on the motor vehicle rental contract or other document invoicing payment. The person collecting the tax shall collect or pay the tax levied under this chapter and shall remit said taxes to the city quarterly.

#### 4.35.030 Tax receipts segregated and held in trust for the city.

(a) Taxes collected pursuant to this chapter belong to the city at the time collected by the rental agency. The rental agency has fiduciary duties to the city for these taxes. The 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 city until remitted to the city.

(b) When the circumstances described in subsections 4.35.090(f)(1) – (f)(3) or subsection 4.35.100(f) have occurred, the finance director may require the rental agency to maintain a separate bank account in a financial institution for segregating tax monies collected. The rental agency required to establish an account under this section shall deposit tax monies therein upon collection.

#### 4.35.040 Tax exemptions.

(a) The following motor vehicle transactions are exempt from the tax levied by section 4.35.020:

(1) Fees and costs paid directly by the United States or State of Alaska or political subdivisions of the State of Alaska insofar as they are immune from taxation; or

(2) Fees and costs paid directly by a person who is an officer or employee of a foreign government or by such person's foreign government employer which is exempt from taxation by law or treaty; or

(3) Fees and costs paid for the rental or lease of a motor vehicle under any financing lease, including direct financing leases and sales-type leases.

(b) A right of reimbursement to the person renting the motor vehicle from the person or entity entitled to the exemption does not constitute a direct payment.

(c) Fees and costs received by a person who rents or leases a motor vehicle to a rental agency for re-rent or re-lease by the rental agency are exempt from the tax levied by section 4.35.020.

4.35.050 Eligibility for certificate of registration.

(a) To be eligible for a certificate of registration, a person applying to conduct business as a rental agency shall:

- (1) Provide verification and affirmation that all responsible parties for the rental agency:
  - (i) Have not at any time in the most recent five-year period been convicted of a crime related to theft of tax dollars, attempted theft of tax dollars, failure to remit taxes due, embezzlement, felony theft, or similar financial crimes;
  - (ii) Have not at any time during the most recent five-year period had a certificate of registration under this chapter revoked more than once;
  - (iii) Are not delinquent with tax obligations to the city or have any outstanding delinquent financial obligations to the city.
- (2) Have arranged for locations intended for the rental agency's business that comply with the municipal land use ordinances and regulations.
- (3) Ensure that all motor vehicles disclosed in the application and subsequently added to the rental agency's fleet are in compliance with all vehicle equipment, safety and financial security or insurance requirements of federal, state and local laws.

4.35.060 Registration of rental agencies.

(a) *Registration.* Each person intending to engage in business as a rental agency shall first register with the finance director on an application 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 financial guarantee in accordance with section 4.35.090 and a copy of such financial guarantee shall be submitted to the department with the application.

(b) A registration application shall contain the applicant's:

- (1) Registered and business name;
- (2) Physical addresses and locations at which it conducts business;
- (3) Mailing address;
- (4) Registered address;
- (5) Form of business organization and Alaska business license number;
- (6) Complete disclosure of all motor vehicles intended for rental use that are owned or controlled by the applicant as of the date the registration application is filed, including all motor vehicles for which the applicant has entered into a contractual arrangement, written or oral, to acquire the vehicles but has not yet taken physical control of the motor vehicle;

- (7) The address of each location where the applicant will engage in business operations, including, but not limited to, business office(s), service counter(s), vehicle storage lot(s), maintenance and equipment storage area(s);
- (8) Names and addresses of all responsible parties for the rental agency;
- (9) A corporation that applies for a certificate of registration shall provide the names and addresses of the principal officers including president, vice-president, secretary, managing officer, and all stockholders who own ten percent or more of the stock in the corporation. A partnership, including a limited partnership, that applies for a certificate of registration shall provide the names and addresses of all general partners and all partners with an interest of ten percent or more. A limited liability organization that applies for a certificate of registration shall provide the names and addresses of all members with an ownership interest of ten percent or more and the names and addresses of all managers; and
- (10) Such other information as the department may require.
- (c) Upon receipt of a properly completed application from an eligible applicant, the finance director shall, without charge, issue a certificate of registration to the rental agency. The certificate shall be valid only for the business name and address listed thereon. A person's application for and acceptance of the certificate of registration issued under this section constitutes confirmation of the person's acknowledgement on behalf of the applicant and rental agency of the fiduciary duties pursuant to this chapter.
- (d) A rental agency shall prominently display its certificate of registration to its customers.
- (e) 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 that information submitted in the application is false or misleading and is not made in good faith.
- (f) Every rental agency electing to provide a surety bond to fulfill the requirement for a financial guarantee under this chapter shall annually register under this section to renew its certificate of registration.
- (g) *Non-transferable.* The certificate of registration issued under this section is not assignable or transferable, except that in the case of death, bankruptcy, receivership, or incompetency of the rental agency (or its principals if the rental agency is an entity), or if the certificate is transferred to another by operation of law, the department may extend the certificate for a limited time to the executor, administrator, trustee, receiver, or the transferee.
- (h) The certificate of registration issued under this section is a privilege for a rental agency to have, and there is no right, entitlement or property interest created by the issuance of a certificate to a rental agency.

#### 4.35.070 Registered hosting platforms.

- (a) *Registration, collection, and remittance required.* Every hosting platform that agrees to accept a motor vehicle rental payment from a motor vehicle renter pursuant to section 12.45.020, subject to exemptions specified in subsection 4.35.070(a)(1), shall obtain a certificate of

registration prior to renting motor vehicles to persons subject to this chapter, and shall collect vehicle rental tax and remit the tax to the department on behalf of all rental agencies, as defined in section 4.35.010, for which it provides this service.

(1) Exemptions.

(i) The following rules apply to exemptions from subsection (a).:

a. Branded hosting platforms used exclusively for a particular rental car brand and its affiliates are exempt from registration.

b. Tour companies, travel booking agents, and wholesale vehicle rental agencies are exempt from vehicle rental tax collection and remittance to the department for each vehicle rental transaction meeting the following criteria:

1. The rental of vehicles at an individual rental agency with 25 or more vehicles that is properly registered with the city, per the Treasury Division's online published list of registered rental agencies; and

2. Collection of vehicle rental tax and payment of funds to the registered rental agency, either through direct transfer or subsequent billing from the registered rental agency.

(ii) Any hosting platform subject to subsection (a). that is wholly involved in vehicle rental transactions covered by this subsection (a)(1). shall not be required to register, collect, and remit vehicle rental tax to the department.

(b) *Application.* Application for a certificate of registration shall be made to the finance director on a form provided by the department containing such information as the department may require. There shall be no charge for issuing a certificate of registration.

(c) *Responsibilities.* A rental agency that uses a registered hosting platform as the sole method for renting or offering motor vehicles for rent shall not be subject to this chapter to the extent the registered hosting platform performs the responsibilities of a rental agency, with the exception of section 4.35.210, maintenance and inspection of documents and records.

(d) A hosting platform applying for a certificate of registration under this chapter shall provide security for its fiduciary performance in accordance with section 4.35.090, security for fiduciary performance. Evidence of such security shall be submitted to the department with the application.

(e) Taxes collected by a registered hosting platform pursuant to this chapter shall vest in the city upon collection. The hosting platform has a fiduciary duty to the city for these taxes. The taxes shall be segregated from the hosting platform's funds, at least by book account, and held in trust for the exclusive benefit of the city until remitted to the city.

(f) A registered hosting platform shall submit tax returns and remit tax payments in accordance with sections 4.35.100 and 4.35.110, except that the tax return shall set forth or include the aggregated amounts of all motor vehicle rents earned by and taxes due from the rental agencies who use the hosting platform to rent or offer to rent motor vehicles through the

hosting platform. To the extent a hosting platform collects taxes on behalf of a rental agency, the rental agency's liability for those taxes shall be deemed satisfied.

(g) A registered hosting platform shall obtain and preserve evidence sufficient to support all motor vehicle rental transactions subject to this chapter and all claimed exemptions from payment, collection, or remittance of the vehicle rental taxes under this chapter in accordance with section 4.35.210. To the extent a hosting platform may assign anonymous account numbers to rental agencies or individuals using the hosting platform, when inspecting records the department shall inspect the required records in an anonymized fashion, unless the department has obtained a release of information form the rental agency or individual, or an order to produce identifiable information issued through a binding legal process.

(h) A registered hosting platform is not subject to section 4.35.160, tax lien.

(i) Except as expressly provided for in this section, a hosting platform is subject to all other provisions of this chapter.

#### 4.35.080 Fiduciary duties.

(a) The fiduciary duties include at a minimum:

(1) Determining, implementing, and enforcing sufficient and relevant policies and practices to ensure proper performance of fiduciary duties;

(2) Charging, collecting, and safeguarding all taxes required by this chapter to be collected by the rental agency;

(3) Directing and reviewing the actions of each member, officer, director, employee, and contractor employed or used by the rental agency in the exercise of the fiduciary duties under this chapter;

(4) Performing all acts, not prohibited by this chapter, whether or not expressly authorized, that a reasonable and prudent person would consider necessary or proper in administering and safeguarding the taxes collected under this chapter; and

(5) Maintaining accounting records associated with taxes collected under this chapter in accordance with generally accepted accounting principles.

(b) The fiduciary is liable for a breach of a duty that is assigned or delegated. However, the fiduciary is not liable for a breach of a duty that has been delegated to another person if the duty is assigned by law to another person, except to the extent that the fiduciary or designee:

(1) Knowingly participates in, or knowingly undertakes to conceal, an act or omission of another person knowing that the act or omission is a breach of that person's duties under this chapter; or

(2) By failure to comply with this section in the administration of specific responsibilities, enables another person to commit a breach of duty.

(c) Funds held in a fiduciary capacity shall be clearly identified in a rental agency's financial statement and, if maintained in an account at a financial institution the account shall be clearly identified as a fiduciary account.

4.35.090 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 finance director determines to be eight percent of the estimated average annual gross fees and costs earned by the rental agency, or \$5,000.00, 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 4.35.060. In the event the city 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.

(b) 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 finance director for a waiver of the requirement for the rental agency to post a guarantee. The request must include information demonstrating the rental agency has sufficient capital to conduct normal business operations. Except as listed below, the finance director shall provide written approval of such request, stating the date the requirement for a guarantee shall expire.

(1) The finance director shall not approve the rental agency's request and the requirement for a guarantee shall not expire when the rental agency has had any certificate of registration previously issued under this chapter revoked by the department.

(2) The finance director shall not approve the rental agency's request and the requirement for a guarantee shall not expire when the department has reasonable cause to believe that the rental agency is a related party or related entity to another rental agency or prior rental agency whose certificate of registration has previously been revoked under this chapter.

(3) The finance director shall not approve the rental agency's request unless the rental agency has sufficient capital to conduct normal business operations, timely and fully paying all financial obligations. Evidence of sufficient capitalization includes but is not limited to a debt-to-equity ratio less than 9 or a debt ratio less than 0.9.

(c) The agreement or contract and other evidence of a guarantee under this section is subject to inspection by the department.

(d) Security for fiduciary performance under this section may be waived for a rental agency having three or fewer motor vehicles for rent provided the rental agency files a tax return and remits the full amount of tax due by the due dates prescribed in this chapter.

(e) The finance director may require the rental agency to provide a financial guarantee that is double the amount established by subsection A. of this section, when:

(1) A responsible party was ineligible for a five-year period under a limitation in subsections 4.35.050(a)(1)(i) or (a)(1)(ii), and the five-year period has passed;

(2) The rental agency has incurred penalties under this chapter in at least two consecutive calendar quarters; or



(3) The rental agency has incurred penalties under this chapter in at least two quarters of any three consecutive calendar quarter period.

4.35.100 Motor vehicle rental tax return and remittance.

(a) Within 30 days after the end of each month, every rental agency shall submit to the department a tax return upon a form provided by the department and shall remit therewith all taxes required to be collected by this chapter during the immediately preceding calendar quarter. A tax return shall be filed even if there are no taxes due for the period being reported. Tax returns and taxes to be remitted under this chapter must be actually received by the department within the time required by this section.

(1) The tax return shall be signed under penalty of perjury by an officer of the rental agency and shall include:

- (i) The name and mailing address of the rental agency;
- (ii) The name and title of the person filing the tax return;
- (iii) Whether the cash basis or accrual basis accounting method is used to report rents earned;
- (iv) The aggregate amount of the fees and costs earned by the rental agency for motor vehicle rentals within the city;
- (v) The amount of motor vehicle tax due;
- (vi) The vehicle inventory disclosure form; and
- (vii) Such other relevant information and supporting documentation as the department may require.

(2) As used in subsection A.1.d. of this section, "fees and costs earned" means revenue recognized on the rental agency's books of account in the legitimate and normal and ordinary course of the rental agency's business. A rental agency must elect to report fees and costs on the accrual basis or the cash basis method of accounting. Once adopted, a rental agency's method of reporting fees and costs shall not be changed without prior written approval of the chief fiscal officer. Generally, cash basis businesses recognize the total fees and costs for motor vehicle rentals as earned when the payments are actually collected and accrual basis businesses recognize the total fees and costs for motor vehicle rentals as earned when the rental transactions occur regardless of when payment is actually received.

(b) If a rental agency fails to file a tax return under this section or when the finance director finds that a tax return filed by a rental agency is not supported by the records required to be maintained under this chapter, the finance director may prepare and file an involuntary tax return on behalf of the rental agency. Taxes due on an involuntary tax return may be premised upon any information that is available to the finance director including comparative data for similar businesses. A rental agency shall be liable for the taxes stated on an involuntary tax return together with penalties and interest provided in this chapter.

- (1) The department shall notify the rental agency of an involuntary tax return, the basis of the department's calculations, the rental agency's rights under Section 4.35.230, and notice that payment of the taxes, penalties, and interest is due immediately.
  - (2) Unless otherwise determined by the finance director in a decision under Section 4.35.230, taxes due under this section shall be due on the same date as if a tax return had been filed by the rental agency in accordance with this chapter, and interest, penalties, and costs thereon shall accrue from such date.
  - (3) A tax return prepared by the finance director is prima facie evidence of taxes due, and the penalties and interest accruing from said tax liability. In an application under section 4.35.230, it is the rental agency's burden to rebut the presumed sufficiency of a tax return prepared by the department.
- (c) Notwithstanding anything contained in this chapter to the contrary, within ten days after ceasing to be a rental agency, the rental agency shall:
- (1) Surrender its certificate of registration to the department; and
  - (2) Notify the finance director in writing of:
    - (i) The name, telephone number, and address of any person to whom the rental agency described in the surrendered certificate of registration has been leased, conveyed, or otherwise relinquished or transferred;
    - (ii) The date of such leasing, conveyance, relinquishment; or transfer; and
    - (iii) The date on which the person surrendering the certificate of registration ceased doing business as a rental agency; and
  - (3) File a final tax return for the calendar quarter during which the rental agency ceased its business together with all taxes collected and other payments due in accordance with this chapter.
- (d) It shall be the responsibility of every director and/or corporate officer of a corporation owning, operating, or controlling a rental agency registered under this chapter to ensure that timely and proper tax returns are filed and the related taxes due under this chapter are remitted to the department on behalf of the corporation. A director and/or corporate officer may be held personally liable for failing to timely:
- (1) File a proper tax return; or
  - (2) Remit taxes due.
- (e) It shall be the responsibility of every member of a limited liability company owning, operating, or controlling a rental agency registered under this chapter to ensure that timely and proper tax returns are filed and the related taxes due under this chapter are remitted to the department on behalf of the limited liability company. A member of a limited liability company may be held personally liable, to the extent provided by law, for failing to timely:
- (1) File a proper tax return; or
  - (2) Remit taxes due.
- (f) The department may require a rental agency to file tax returns and remit taxes due at the end of each month within 30 days after the end of the month being reported, if:

- (1) A person who was ineligible for a certificate because of the five-year limitation in subsections 4.35.060(a)(1)(i) or (a)(1)(ii) is a responsible party for a rental agency and the five-year period has passed; or
- (2) A rental agency meets eligibility requirements for a certificate, but has:
  - (i) A debt-to-equity ratio between 7 and 9; or
  - (ii) A debt ratio between 0.7 and 0.9.

4.35.110 Amended tax returns.

- (a) Any tax return filed under sections 4.35.100(a) or 4.35.100(c) may be amended by the rental agency.

4.35.120 Tax refunds.

- (a) If the department determines after audit that a rental agency's tax remittance exceeds the actual amount due, the department shall, upon written request of the rental agency, refund the excess to the rental agency without interest.
- (b) The rental agency shall apply for a refund in writing on a form provided by the department not later than two years from the date the excess payment was transmitted to the department. Any claim for a refund filed more than two years after the date of the excess payment is forever barred. For purposes of this section, a "refund" means payment by the city to the rental agency or book entry by the city to offset other current or future amounts due from the rental agency.
- (c) If a rental agency discovers that it has miscalculated the tax, and the person who rented a motor vehicle paid more tax than should have been collected, the rental agency shall refund to the renter the excess amount collected. If the rental agency has not located the renter and refunded the excess tax collected within 30 days, the excess tax shall be remitted to the city with the next tax return and remittance due pursuant to section 4.35.100.

4.35.130 Expiration or revocation of certificate of registration.

- (a) A certificate of registration shall automatically expire:
  - (1) Two years from the date of issuance.
  - (2) On the last day of the term of the surety bond submitted as financial guarantee, when the rental agency is required to renew or provide a new financial guarantee if such requirement has not been waived, and the rental agency must reapply, pursuant to section 4.35.060, to renew its certificate.
  - (3) If any of the information required by subsections (c)(1) through (c)(5) of section 4.35.060 changes. Within ten days thereafter, the certificate shall be surrendered along with all copies thereof, to the finance director for cancellation and issuance of a new certificate.
- (b) A certificate of registration shall be automatically revoked:

- (1) When the rental agency's required financial guarantee lapses, is not renewed, expires, is modified without the written consent of the chief fiscal officer, is cancelled, or is otherwise terminated; or
  - (2) In the event the city exercises a claim against the financial guarantee and the rental agency fails to replace, renew or replenish its financial guarantee, in an amount equal to the amount of the paid claim or in an aggregate amount as required by section 4.35.090, no later than 30 days after the date such claim was paid.
- (c) The department may revoke a certificate of registration if:
- (1) A rental agency fails to remit substantially all (at least 95 percent) of the taxes due under this chapter within 45 calendar days of the due date;
  - (2) Subsequent to the issuance of the certificate the department discovers that the rental agency 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 was false or misleading and was not made in good faith;
  - (3) When the rental agency's circumstances change to a point where it no longer meets eligibility requirements set forth in section 4.35.050; or
  - (4) The rental agency has committed any violation of this chapter.
- (d) Except for automatic revocation under subsection (b), the department shall give reasonable notice of the intent to revoke a certificate of registration and, prior to revocation, shall provide the rental agency a reasonable opportunity to respond or to rebut the grounds for the revocation action.

4.35.140 Prohibited acts.

- (a) In addition to other acts and omissions prohibited by this chapter:
- (1) No person shall fail or refuse to pay the tax imposed by this chapter when it is due and payable to a rental agency authorized to collect the tax.
  - (2) A rental agency or responsible party shall not advertise or state to the public or to any person renting a motor vehicle, directly or indirectly, that the tax or any part of it will be assumed or absorbed by the rental agency. A rental agency or responsible party shall not advertise or state to the public or to any person renting a motor vehicle, directly or indirectly, that the tax will not be added to the rental contract or that it will be refunded except as provided in this chapter. A rental agency or responsible party shall not absorb or fail to add the tax or any part of it or fail to state the tax separately to the person renting the motor vehicle.
  - (3) No person, rental agency, or responsible party shall charge in excess of the proper amount of tax due under this chapter.
- (b) No person shall engage in business as a rental agency without obtaining a certificate of registration under this chapter.
- (c) No rental agency or responsible party shall deny the chief fiscal officer, subsequent to identification during normal business hours, access to the rental agency's required records for purposes of inspection under this chapter.

- (d) No rental agency or responsible party shall fail to make a required remittance to the department of funds collected and to be held in trust for the city.
- (e) A person shall not divert or otherwise appropriate for business or personal use funds required to be held in a fiduciary capacity under this chapter. Use of funds held in a fiduciary capacity under this chapter for any purpose other than the one for which the funds are being held is prohibited. Prohibited purposes under this section include, but are not limited to, using funds held or received in a fiduciary capacity to:
- (1) Pledge as collateral to secure an amount owing;
  - (2) Guarantee a contract of surety; or
  - (3) Assign.
- (f) A person shall not factor a rental agency's accounts receivable, or transact any type of asset-financing arrangement in which a rental agency uses its accounts receivable as collateral in a financing agreement, when the accounts receivable contain charges for motor vehicle rental taxes, without first notifying the department and remitting to the department a payment equal to the total charges for motor vehicle rental taxes being factored or collateralized.
- (g) A person shall not prepare and submit to the department a false tax return with the intent to fail to remit taxes due pursuant to this chapter.
- (h) A person shall not knowingly use, allow or permit the use of real property in the city by a rental agency for use in conducting its business as a rental agency, unless the rental agency is properly registered with the department under this chapter. Providing such real property after notice from the department that such provision of real property violates this section is prima facie evidence of the violation.
- (i) A person shall not knowingly provide advertising, web hosting, or other marketing services to a rental agency in the city that is not properly registered under this chapter. Providing such services after notice from the department that such provision of services violates this section is prima facie evidence of the violation.

#### 4.35.150 Tax avoidance.

- (a) If the department has reasonable cause to believe that a rental agency has structured a contract to rent a motor vehicle to avoid collecting or remitting the tax levied under this chapter, or has wrongfully deceived its customers or the department, the department may take one or both of the following actions:
- (1) Declare there is a rebuttable presumption that the substance of a specific motor vehicle rental transaction is a taxable transaction under this chapter and proceed to establish, levy and collect the tax together with costs, penalties and interest as provided for in this chapter; or
  - (2) Order and require the rental agency to retain and preserve records identified in section 4.35.210 for not more than six years. If the records for prior reporting periods do not exist, the department may prepare and file involuntary return(s) on behalf of the rental agency, as provided in subsection 4.35.100(b).

4.35.160 Tax lien.

- (a) Taxes due and not paid on the date required by this chapter, together with all interest, penalties and costs accruing thereafter, shall immediately become a lien in favor of the city upon all of the rental agency's real and personal property including rights to property. Such lien shall continue until all taxes, penalties, interest and costs due the city 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 liable for the taxes by 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 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.
- (d) No failure or defect in the notice of lien, except as to amount, shall adversely affect the existence or priority of the lien created under this section.

4.35.170 Collection of taxes.

- (a) Taxes, interest, penalties, and administration costs due under this chapter and unpaid may be collected by any lawful means, including by a civil action for the collection of a debt, by executing a claim against security provided under section 4.35.090, by foreclosure of the tax lien in accordance with AS 09.45.170 through 09.45.220 or similar statutes in substitution thereof, or by any combination of the above.

4.35.180 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 percent of the taxes actually due the city 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 percent of the taxes actually due the city 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 civil penalties shall be automatically increased from ten percent to twenty-five percent.
  - (1) The penalty shall be computed on the unpaid balance of the tax liability as determined by the department.
  - (2) Notice of the penalties incurred and to be incurred shall be given to the person responsible for payment of the taxes or filing the tax return when such tax payment or tax return is delinquent for seven calendar days after its due date.
  - (3) The penalties provided for in this subsection shall be in addition to all other penalties and interest provided for under this chapter.

(b) A rental agency that has failed to file a tax return or remit the taxes due to the city by the due date for three consecutive quarters may be required by the department to file tax returns and remit taxes due at the end of each month within 30 days after the end of the month being reported. If the rental agency subsequently files tax returns and remits taxes due for 12 consecutive months without incurring penalties and interest, the Department may allow the rental agency to resume filing tax returns and remitting taxes quarterly.

(c) A rental agency or responsible party who willfully fails to collect the tax levied by this chapter shall incur a civil penalty equal to twice the amount of the tax which should have been collected.

(d) If a rental agency fails to remit at least 95 percent of the taxes due under this chapter within 45 calendar days of the due date, 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, owner and responsible party 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 city plus a penalty equal to 25 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.

(f) Civil and criminal penalties shall be cumulative remedies and shall not relieve a rental agency, responsible party, or person renting a motor vehicle of the duties imposed under this chapter.

(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. In addition to any other remedy or penalty provided by this chapter, a rental agency, responsible party or any person who violates a provision of this chapter, a valid order of the department or finance director authorized under this chapter, or a municipal regulation promulgated under this chapter, shall be subject to a civil penalty, or injunctive relief to restrain the person from continuing the violation or threat of violation, or both such civil penalty and injunctive relief. Upon application by the city for injunctive relief and a finding that a person is violating or threatening to violate a provision of this chapter or a municipal regulation promulgated under this chapter, the Superior Court shall grant injunctive relief to restrain the violation.

(h) A person who owns or controls the real property where an unregistered rental agency is operating and who, after being notified by the department that the continued operation of the unregistered rental agency is in violation of this chapter, allows the unregistered rental agency to continue to operate on the property is complicit in a prohibited act under section 4.35.140 and shall be subject to penalties set forth in subsection G.

(i) A person who provides advertising, web hosting, or other marketing services to a rental agency in the city not having a certificate of registration under this chapter after receiving notice from the department to cease such services is complicit in a prohibited act under section 4.35.140 and shall be subject to penalties set forth in subsection G.

(j) A person who commits an act prohibited by this chapter is subject to prosecution.

4.35.190 Interest.

(a) In addition to any penalties imposed by this chapter, interest at the rate of 12 percent per annum shall accrue and be due from the rental agency on the unremitted balance of taxes after the date on which their remittance was due.

4.35.200 Application of payments.

(a) Any payment submitted to the department for any taxes, penalties, interest, or costs due under any provision of this chapter or any return or any finding or determination by the department under this chapter shall be credited to the tax period for which remitted, first to the payment of costs and then to penalties, interest, and taxes in that order. If the rental agency does not specify the tax period, then the payment shall be credited first to the oldest tax period for which there is an outstanding amount due, then to the payment of costs, penalties, interest, and the same items due in the next oldest tax period, in that order.

4.35.210 Maintenance and inspection of documents and records.

(a) *Motor vehicle rental transactions.* Any person who collects fees and costs for the rental of a motor vehicle shall keep and preserve sufficient records to document each rental of a motor vehicle. The collection of advance deposits constitutes the collection of fees and costs for the purposes of this subsection. Unless a longer period is ordered by the chief financial officer under section 12.45.100 or a court of competent jurisdiction, a rental agency shall keep and preserve all required records within the city for not less than two calendar years after the end of the calendar year in which such records are created and shall make available such records for inspection by the department upon request. Sufficient records shall include, but not necessarily be limited to:

- (1) All rental contracts and accounting records reflecting the rental of each motor vehicle for which the rental agency received fees and costs, and the total fees and costs received therefor;
- (2) The renter's name, address, beginning and ending dates of the rental period, motor vehicle identification number (VIN#) or license plate number, and all fees and costs charged to the renter, method of payment, and payment amount, as recorded on the rental contract or otherwise; and
- (3) All periodic statements and records from financial institutions provided to, or available to, the rental agency for accounts in which fees and costs or motor vehicle rental taxes were deposited;
- (4) All periodic statements provided to the rental agency from credit card or debit card processors containing details of customer payment transactions for motor vehicle fees and costs or motor vehicle rental taxes; and
- (5) Books of account, journals, ledgers, and other compilations of source documents that reconcile to total fees and costs earned and tax collected as listed on the tax returns filed with the department under the authority of this chapter.

(b) *Tax-exempt transactions.* It shall be the responsibility of each rental agency to obtain and preserve sufficient evidence to support all claimed exemptions from payment, collection, or remittance of the rental vehicle tax. Specification in this subsection of the records to be kept by a rental agency shall not relieve the rental agency of its responsibility to keep sufficient records.



Unless a longer period is ordered by the chief financial officer under section 4.35.150 or a court of competent jurisdiction, a rental agency shall keep and preserve in the city at least the following minimum records for two calendar years after the end of the calendar year in which created:

- (1) All the information and records required under subsection (a) of this section;
- (2) A record of the method of payment in cases where an exemption is claimed for a motor vehicle rental;
- (3) In the case of a claimed foreign government employee exemption as provided in this chapter, a copy of the identification card issued by the United States Department of State, which shall be attached to the rental contract or otherwise cross-referenced to that rental contract;
- (4) Evidence which demonstrates fees and costs "paid directly," such as copies of documents, copies of bills, invoices, purchase orders, treasury warrants, or other payment arrangement made directly between the rental agency and the person or entity by which the fees and costs were "paid directly." A rental agency shall cross-reference the appropriate rental contract with the evidence of direct payment which qualifies for an exemption by attaching a copy of the supporting evidence to the rental contract or by reciprocal notations on the affected rental contract and on the evidence supporting such an exemption;
- (5) Such other records, documents, and information as the department may require by regulation or notice to the rental agency as reasonably necessary and convenient to its administration and enforcement of this chapter.

(c) *Fleet inventory.* It shall be the responsibility of the rental agency to obtain and preserve sufficient information on the motor vehicles the rental agency controls or offers for rent to enable the department to perform inspections of records pursuant to this chapter. Specification in this chapter of the records to be kept by a rental agency shall not relieve the rental agency of its responsibility to keep sufficient records. Unless a longer period is ordered by the chief financial officer under section 4.35.150 or a court of competent jurisdiction, a rental agency shall keep and preserve in the city at least the following minimum records for two calendar years after the end of the calendar year in which created:

- (1) For motor vehicles owned by the rental agency, the vehicle registration and title documents issued by the State of Alaska Department of Motor Vehicles. If the motor vehicle has been sold or otherwise transferred to another person, then copies of the vehicle registration and title documents as well as documents or records reflecting the date of the sale or transfer shall be retained.
- (2) For motor vehicles controlled but not owned by the rental agency, all documents and accounting records which reflect the rental agency's authority to rent or lease a motor vehicle on behalf of the registered owner of the motor vehicle. These records include but are not limited to the following:
  - (i) Name, physical address, mailing address (if different), and phone numbers of the registered owner of the motor vehicle;

- (ii) Identification of the motor vehicle, such as a record of the license plate number and the state which issued the license plate;
- (iii) Rental contract, lease agreement, or similar documents of a contractual nature between the registered owner of the motor vehicle and the rental agency reflecting the agency's authority to offer the motor vehicle for rent and the contracted period of time for which the rental agency has the authority to offer the motor vehicle for rent;
- (iv) Documents and records reflecting any periods of time when the motor vehicle is not available for rent by the rental agency due to the registered owner's personal use of the motor vehicle;
- (v) Documents and records reflecting the total fees and costs collected by the rental agency and the amounts subsequently paid to the registered owner of the motor vehicle, including any deductions for items including but not limited to maintenance, repairs, and commission charges.

(d) *Rental agency financial and administrative records.* Unless a longer period is ordered by the chief financial officer under section 4.35.150 or a court of competent jurisdiction, a rental agency shall keep and preserve in the city at least the following minimum records for two calendar years after the end of the calendar year in which created:

- (1) Sufficient documentation confirming eligibility under section 4.35.050; and
- (2) Any financial document related to the rental agency that has been submitted to a financial institution, potential investor, or other potential source of financing.

(e) Persons subject to this chapter shall keep and preserve such other documents and records as the department prescribes.

(f) During normal business hours, the finance director, upon presentation of proper identification, may inspect the records which a rental agency is required to maintain under this section, or inspect the records of a person whom the finance director has probable cause to believe is a rental agency in order to determine whether that person is a rental agency. Upon notice of the department's intent to inspect records, a person or rental agency shall retain such records and preserve their availability to the department until released by the department in writing, regardless of whether such retention and preservation continues beyond the two-year period specified in this section.

- (1) The finance director's authority to inspect records shall not be limited to records within the two-calendar year retention period. If a rental agency has possession or control of records described in subsections A. through E. that are older than the two-year period specified in this section, the rental agency shall make such records available for inspection upon request.
- (2) The rental agency shall make available for inspection within the city, all records required to be kept and preserved by this chapter. Records older than the two-calendar year retention period specified in this section shall not be barred from discovery under court or administrative rules on relevance or admissibility grounds solely based on the age of the records.

(g) The department may inspect records required by this chapter of all responsible parties who had control of, or access to, funds collected from customers of the rental agency, and such persons shall be subject the requirements of this section.

(h) Where the Constitution of the United States or of the State of Alaska so requires, the finance director shall obtain an administrative search warrant authorizing an inspection and shall exhibit the warrant to the person in charge of the premises before conducting the inspection. The finance director shall apply to the trial courts of the State of Alaska to obtain an administrative search warrant, stating in the application the name and address of the premises to be inspected, the authority to conduct the inspection, the nature and extent of the inspection, and the facts and circumstances justifying the inspection. Warrants issued under this section shall be returned to the court by which issued within ten days after the date issued.

#### 4.35.220 Confidentiality of records.

(a) Records of financial transactions kept by persons and businesses required pursuant to this chapter for the purpose of collecting and administering this vehicle tax shall be considered confidential and shall not be disclosed to any person except employees and agents of the city and only for official purposes.

(1) It is the duty of the finance director to safety keep tax returns filed under this chapter, all data taken therefrom, and all financial information obtained from an inspection of the rental agency's records in accordance with this chapter secure from public and private inspection except as provided by this section.

(2) Records of rental agencies shall not be disclosed except upon court order, when necessary to enforce the provisions of or to collect the taxes due under this chapter, or for inspection by the city manager, finance director, municipal attorney, auditor, or council in the performance of their official duties.

(b) This section does not prohibit the city from compiling and publishing statistical information concerning the data submitted provided no identification of particular tax returns or rental agency information, data, or financial information is made.

(c) This section shall not prohibit the finance director from sharing information obtained from tax returns, documents, records, and/or reports filed with the city pursuant to this chapter with any local, state, or federal government agency for the purpose of enforcing this chapter or for tax purposes of the other government agency, provided the finance director determines the other government agency provides adequate safeguards for the confidentiality of the shared information and that it will be used for tax purposes only.

#### 4.35.230 Remedies for a person aggrieved.

(a) Any person aggrieved by any action or determination of the department under this chapter may apply to the department and request a hearing before the finance director on the department's action or determination within 30 days from the date the department mails notice of the department's action or determination.

(1) An application for a hearing must notify the department of the specific action or determination complained of and the amount of tax, interest, cost or penalty contested and the reason for such contest.

- (2) The uncontested portion of any tax due under this chapter shall be paid when due regardless of any application for a hearing. Payment of the total amount due may be made at any time before the hearing. If the department has reasonable cause to believe that collection of the total amount due might be jeopardized by delay, immediate payment of the total amount may be demanded, and the department may pursue any collection remedies provided by law. Payment in full does not affect a person's right to a hearing.
- (b) Upon timely application for a hearing under subsection (a). of this section, the finance director shall hold a hearing and render a to determine whether a correction or reversal of the department's action or determination is warranted.
- (1) If a person requesting a hearing fails to appear at the hearing, the finance director may issue a decision without taking evidence from that person, unless the person shows reasonable cause for failure to appear within seven days after the date scheduled for the hearing.
- (c) Within 30 days after receipt of a written decision by the finance director, a person aggrieved by the decision may appeal the decision to the Superior Court of the Third Judicial District.
- (1) The person aggrieved shall be given access to the department's file in the matter for preparation of such appeal.
- (2) Taxes, costs, penalties, and interest declared to be due in the decision of the finance director must be paid within 30 days after the date of the decision or a supersedeas bond guaranteeing their payment must be filed with the court in accordance with Alaska Court Rules of Appellate Procedures.
- (d) If after the appeal to the Superior Court is heard it appears that the action or determination of the department and/or the decision of the finance director was correct, the court shall confirm such action, determination, or decision, as the case may be. If the department's action or determination or the decision of the finance director 's decision was incorrect, the court may determine the proper action, determination, or decision. If the person aggrieved is entitled to recover all or part, of any tax due or paid, the court shall order the repayment and the department shall pay such amount within 14 days and attach a certified copy of the judgment to the payment.
- (e) Hearings before the finance director under this chapter may, at the option of the finance director, be conducted by the city manager. If the finance director refers such matter to the city manager, the city manager shall conduct the hearing and prepare findings and conclusions. These findings and conclusions shall be forwarded to the finance director for adoption, rejection or modification and issuance of a final order or decision by the finance director.

#### 4.40.240 Administrative policy.

- (a) The city manager may adopt policy providing for the application and interpretation of this chapter and providing methods and forms for reporting and collecting the taxes imposed by this chapter.