

ORDINANCE NO. 59

AN ORDINANCE PROVIDING FOR FUNDS FOR GENERAL AND SPECIAL PURPOSES OF THE MUNICIPAL GOVERNMENT OF THE CITY OF STILWELL; LEVYING A TAX ON THE GROSS RECEIPTS OR PROCEEDS ON CERTAIN SALES AS HEREIN DEFINED; DEFINING TERMS; PRESCRIBING PROCEDURE, REMEDIES, LIENS AND FIXING PENALTIES; FIXING EFFECTIVE DATE; MAKING PROVISIONS SEVERABLE; AND DECLARING AN EMERGENCY.

EMERGENCY ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STILWELL:

SECTION 1. CITATION AND CODIFICATION.

This Ordinance shall be known and may be cited as Stilwell Sales Tax Ordinance.:

SECTION 2. SUBSISTING STATE PERMITS.

All valid and subsisting permits to do business issued by the Oklahoma Tax Commission pursuant to the Oklahoma Sales Tax Code are, for the purpose of this Ordinance, hereby ratified, confirmed and adopted in lieu of any requirement for an additional city permit for the same purpose.

SECTION 3. EFFECTIVE DATE.

This Ordinance shall become and be effective on and after November 7, 1967, subject to approval of a majority of the registered voters of the City of Stilwell, Oklahoma, voting on same in the manner prescribed by 11 O.S. 1961, Section 61.

SECTION 4. PURPOSE OF REVENUES.

It is hereby declared to be the purpose of this Title to provide revenues for the support of the functions of the municipal government of the City of Stilwell.

SECTION 5. TAX RATE - SALES SUBJECT TO TAX.

There is hereby levied an excise tax of one percent (1%) upon the gross proceeds or receipts derived from all sales tax law of Oklahoma, including the following:

- (a) Tangible personal property.
- (b) Natural or artificial gas, electricity, ice, steam or any other utility or public service, except water.
- (c) Transportation for hire of persons by common carriers, including railroad, both steam and electric; motor transportation companies; taxi-cab companies; pullman car companies; airlines and all other means of transportation for hire.
- (d) Service by telephone and telegraph companies to subscribers or users, including transmission of messages, whether local or long distance. This shall include all services and rental charges having any connection with transmission of any message.
- (e) printing or printed matter of all types, kinds and characters and for the service of printing or overprinting.
- (f) Service of furnishing rooms by hotels, apartment hotels, public rooming houses and public lodging houses and tourist camps.
- (g) Service of furnishing storage or parking privileges by auto hotels or parking lots.
- (h) Foods, confections and all drinks sold or dispensed by hotels, restaurants or other dispensers and sold for immediate consumption

- upon the premises or delivered or carried away from the premises for consumption elsewhere.
- (i) Advertising of all kinds, types and character, including any and all devices used for advertising purposes, and the servicing of any advertising devices, except as provided in subsection (r) of Section 6 hereof.
 - (j) Dues or fees to clubs and the sale of tickets or admission to places of amusement, to athletic entertainment, recreational events, or dues or fees for the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities, including free or complimentary passes, tickets, dues or fees, are hereby declared to have a value equivalent to the sale price of tickets, passes, admissions, fees or dues of like kind and character.
 - (k) For the purpose of this Title, sales of services and tangible personal property made for the purpose of developing real estate, even though such real estate is intended for resale as real property, are hereby declared to be sales to consumers or users. Sales of service or tangible personal property, including materials, supplies and equipment, made to contractors who use same in the performance of any contract are hereby declared to be sales to consumers or users and not sales for resale. Sales of tangible personal property to persons who are primarily engaged in selling their services shall be deemed sales to consumers or users and, therefore, taxable. Sales of tangible personal property to peddlers, solicitors or other salesmen who do not have established places of business shall be deemed to be sales to consumers or users, and therefore taxable.

[Section 5 Amended by Ordinance no. 76 (6/7/71) and No. 202 (9/6/88)]

SECTION 6. EXEMPTIONS.

There are hereby specifically exempted from the tax levied by the Title the gross receipts or gross proceeds exempted from the Sales Tax Law of Oklahoma, inclusive but not exclusive of and derived from the:

- (a) Sale of non-intoxicating beverages taxes as provided by State law.
- (b) Sale of cigarettes and such tobacco products as are taxed by State law.
- (c) Sale of raw products from the farm, orchard or garden, where such sale is made by the producer of such raw products directly to the consumer or user; gross receipts or gross proceeds derived from the sale of livestock, poultry, poultry products and dairy products by the producers; exemptions granted by this subdivision shall not apply when such articles are sold, even by the producer thereof, at or from an "established business place" not on a farm; neither shall this exemption apply unless said articles are produced or grown within the State of Oklahoma. The provisions of this subsection are intended to exempt the sale of dairy products by any other business. The provisions shall not be construed to exempt sales by florists, nurserymen and chicken hatcheries.
- (d) Dues paid to fraternal, religious, civic, charitable or educational societies or organizations by regular members thereof, provided such societies or organizations operate under what is commonly termed the lodge plan or system, and, provided such societies or organizations do not operate for a profit which inures to the benefit of any individual member or members thereof to exclusion of other members.

- (e) Sale of tangible personal property or services to or by churches, except where such organizations may be engaged in business for profit or savings, competing with other persons engaged in the same or similar business.
- (f) Gross receipts and gross proceeds deriving from the transportation of school children to and from schools and high schools in motor or other vehicles.
- (g) Sale of food in public, common, high school or college cafeterias and lunch rooms operated primarily for teachers and pupils, not operated primarily for the public and not operated for profit.
- (h) Carrier sales made directly to consumers or users of newspapers or any other periodicals where any individual transaction does not exceed twenty cents (\$.20).
- (i) Sales to the United States government, State of Oklahoma or any of its political subdivisions.
- (j) Sale of gasoline or motor fuel on which the Motor Fuel Tax, Gasoline Excise Tax or Special Fuels Tax has been paid to the State of Oklahoma.
- (k) Sale of crude petroleum or natural or casinghead gas and other products subject to gross production tax under the provisions of the laws of this State. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for an injection into the earth for the purpose of promoting or facilitating the production of oil or gas.
- (l) Sales of motor vehicle, attached optional equipment and accessories on which sale the Oklahoma Motor Vehicle Excise Tax has been paid.
- (m) Sales by County, District or State fairs.
- (n) Sale of advertising space in newspapers and periodicals and billboard advertising service, and sales of time for radio and television broadcasts of advertising.
- (o) Sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the State, provided that such sales to residents of this State are made to persons to whom sales tax permits have been issued by the Oklahoma Tax Commission as provided by law. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchased items for their uses and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors or other salesmen who do not have sales tax permits or established places of business.
- (p) Goods, wares, merchandise and property sold for use in manufacturing, compounding, processing, assembling or preparing for sale shall be classified as having been sold for the purpose of resale or the subject matter of such resale only in the event (a) such goods, wares, merchandise or property are purchased for the purpose of being manufactured into a finished article and it becomes a recognizable, integral part of the manufactured, compounded, processed, assembled or prepared products or (b) if it is consumed in the process of manufacturing, compounding, processing, assembling or preparing products for resale.
- (q) Sale of machinery and equipment purchased and used by persons establishing new manufacturing or processing plants in Oklahoma and machinery and equipment purchased and used by persons in the operation of manufacturing plants already established in Oklahoma, provided this exemption shall not apply unless such machinery and

equipment is incorporated into, and is directly used in, the process of manufacturing property subject to taxation hereunder. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations and generally recognized as such.

- (r) Sale of tangible personal property manufactured in Oklahoma when sold by the manufacturer to a person who transports it to another state for immediate and exclusive use in some other state.
- (s) Sale of an interest in tangible personal property to a partner or other person who, after such sale, owns a joint interest in such tangible personal property where the Oklahoma Sales or Use Tax has previously been paid on such tangible personal property.
- (t) Sales of containers shall be exempt when sold to a person regularly engaged in the business of reselling empty or filled containers, or when he purchases such containers for the purpose of packaging raw products of farm, garden or orchard for resale to the consumer or processor, provided, this exemption shall not apply to the sale of containers used more than once and which are ordinarily known as returnable containers, unless a tax under this Title is collected and paid to the Tax Collector with respect to each and every transfer by each person of title or possession of such returnable container, if made to any consumer or user within this State; nor shall it apply to the sale of labels or other materials delivered along with the items sold but which are not necessary or absolutely essential to the sale of the sold merchandise.
- (u) Exemptions of poultry and livestock feed and farm machinery, as prescribed by the State Sales Tax Code, shall be equally applicable as exemptions from the tax herein levied.

SECTION 7. OTHER EXEMPT TRANSFERS.

Also, there is hereby specifically exempted from the tax herein levied, the transfer of tangible personal property exempted from the Sales Tax Law of Oklahoma, inclusive but not exclusive of the following:

- (a) From one corporation to another corporation, pursuant to a reorganization. As used in this subsection, the term "reorganization" means:
 - (1) A statutory merger of consolidation.
 - (2) The acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation, or of its parent or subsidiary corporation.
- (b) In connection with the winding up, dissolution or liquidation of a corporation only when there is a distribution in kind to the shareholders of the property of such corporation.
- (c) To a corporation for the purpose of organization of such corporation where the former owners of the property transferred are immediately after the transfer in control of the corporation and the stock of securities received by each is substantially in proportion to this interest in the property prior to the transfer.
- (d) To a partnership in the organization of such partnership if the former owners of the property transferred are immediately after the transfer members of such partnerships and the interest of the partnership received by each is substantially in proportion to this interest in the property prior to the transfer.
- (e) From a partnership to the members thereof when made in kind in the dissolution of such partnership.

SECTION 8. TAX DUE WHEN - RETURNS - RECORDS.

The tax levied hereunder shall be due and payable at the time and in the manner and form prescribed for payment of the State Sales Tax under the Sales Tax Law of the State of Oklahoma.

SECTION 9. PAYMENT OF TAX - BRACKETS.

The tax herein levied shall be paid to the Tax Collector at the time, in form and manner provided for payment of state sales tax under the Sales Tax Law of Oklahoma.

SECTION 10. TAX CONSTITUTES DEBT.

Such taxes, penalty and interest due hereunder shall at all times constitute a prior superior and paramount claim as against the claims of unsecured creditors and may be collected by suit as any other debt.

SECTION 11. CLASSIFICATION OF TAXPAYERS.

For the purpose of this Title, the classification of taxpayers hereunder shall be as prescribed by the state law for purposes of the Oklahoma Sales Tax Code.

SECTION 12. VENDOR'S DUTY TO COLLECT TAX.

- (a) The tax levied hereunder shall be paid by the consumer or user to the vendor, and it shall be the duty of each and every vendor in this City to collect from the consumer or user the full amount of tax levied by this Title or an amount equal, as nearly as possible or practicable, to the average equivalent thereof.
- (b) Vendors shall add the tax imposed hereunder, or the average equivalent thereof, to the sales price or charge, and, when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to vendor until paid, and shall be recoverable at law in the same manner as other debts.
- (c) A vendor, as defined herein, who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied hereof; or willfully or intentionally fails, neglects or refuses to comply with the provisions; or remits or rebates to a consumer or user, either directly or indirectly, and by whatsoever means, all or any part of the tax herein levied; or makes, in any form of advertising, verbally or otherwise, any statement which infers that he is absorbing the tax or paying the tax for the consumer or user by an adjustment of price or at a price including the tax or in any manner whatsoever, shall be deemed guilty of an offense.

SECTION 13. RETURNS AND REMITTANCES - DISCOUNTS.

Returns and remittances of the tax herein levied and collected shall be made to the Tax Collector at the time, and in the manner, form and amount, as prescribed for returns and remittances required by the State Sales Tax Code; and remittances of tax collected hereunder shall be subject to the same discount as may be allowed by said Code for collection of State Sales taxes.

SECTION 14. TAX COLLECTOR DEFINED.

The term "Tax Collector," as used herein, means the department of the City government or the official agency of the State duly designated according to law or contract authorized by law to administer the collection of the tax herein levied.

SECTION 15. DEFINITIONS.

The definitions of words, terms and phrases contained in the Oklahoma

Sales Tax Code, Section 1302, Title 68, O.S. Supp. 1965, are hereby adopted by reference and made a part of this Ordinance.

SECTION 16. INTEREST AND PENALTIES - DELINQUENCY.

Section 217 of Title 68, O.S. Supp. 1965, is hereby adopted by reference and made a part of this Ordinance, and interest and penalties at the rates and amounts as therein specified are hereby levied and shall be applicable in cases of delinquency in reporting and paying the tax levied by this Ordinance, provided, that the failure or refusal of any taxpayer to make and transmit the reports and remittances of tax in the time and manner required by this Ordinance shall cause such tax to be delinquent. In addition, if delinquency continues for a period of five (5) days, the taxpayer shall forfeit his claim to any discount allowed under this Ordinance.

SECTION 17. WAIVER OF INTEREST AND PENALTIES.

The interest or penalty or any portion thereof accruing by reason of a taxpayer's failures to pay the City tax herein levied may be waived or remitted in the same manner as provided for said waiver or remittance as applied in the administration of the State Sales Tax provided in 68 O.S. Supp. 1965, Section 220; and to accomplish the purposes of this section, the applicable provisions of said Section 220 are hereby adopted by reference and made a part of this Ordinance.

SECTION 18. ERRONEOUS PAYMENTS - CLAIM FOR REFUND.

Refund or erroneous payment of the City Sales Tax herein levied may be made to any taxpayer making such erroneous payment, in the same manner and procedure and under the same limitations of time, as provided for administration of the State Sales Tax as set forth in 68 O.S. Supp. 1965, Section 227, and, to accomplish the purposes of this Section, the applicable provisions of said Section 227 are hereby adopted by reference and made a part of this Ordinance.

SECTION 19. FRAUDULENT RETURNS.

In addition to all civil penalties provided by this Ordinance, the willful failure or refusal of any taxpayer to make reports and remittances herein required, or the making of any false or fraudulent reports for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under said Ordinance, shall be an offense, and, upon conviction thereof, the offending taxpayer shall be subject to a fine of not more than Twenty dollars (\$20), including costs.

SECTION 20. EXEMPTION OF FERTILIZER.

In addition to all other exemptions allowed by this Ordinance, the sales of agricultural fertilizer to persons regularly engaged for profit in the business of farming and/or ranching, which are exempt from State Sales Tax under provisions of 68 O.S. Supp. 1965, Section 1305 b (a), shall likewise be exempt from the City Sales Tax herein levied.

SECTION 21. RECORDS CONFIDENTIAL.

The confidential and privileged nature of the records and files concerning the administration of the City Sales Tax is legislatively recognized and declared, and, to protect the same, the provisions of 68 O.S. Supp. 1965, Section 205 of the State Sales Tax Code, and each subsection thereof, are hereby adopted by reference and made fully effective and applicable to administration of the City Sales Tax as is herein set forth in full.

SECTION 22. AMENDMENTS.

The people of Stilwell, by their approval of this Ordinance at the election herein above provided, hereby authorize the City Council by Ordinances duly enacted to make such administrative and technical changes or additions in the method and manner of administration and enforcing of this Ordinance as may be necessary or proper for efficiency and fairness, except that the rate of the tax herein provided shall not be changed without approval of the qualified electors of the City as provided by law.

SECTION 23. PROVISIONS CUMULATIVE.

The provisions hereof shall be cumulative and in addition to any and all other taxing provisions of the City Ordinances.

SECTION 24. SEVERABILITY.

The provisions of this Ordinance are severable, and, if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

SECTION 25. EMERGENCY.

WHEREAS, it being immediately necessary for the preservation of the peace, health and safety of Stilwell and the inhabitants thereof that the provisions of this Ordinance be put into full force and effect, an emergency is hereby declared to exist by reason whereof this Ordinance shall take effect and be in full force from and after its passage and publication as provided by law.

PASSED by the Council of the City of Stilwell this 5th day of September, 1967.

HOLDEN E. WILLIAMS
Mayor

ATTEST: JERRY HEWIN
City Clerk

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