

ORDINANCE NO. 1446, FOURTH SERIES.

AN ORDINANCE OF THE CITY OF SACRAMENTO IMPOSING A LICENSE TAX FOR THE PRIVILEGE OF SELLING TANGIBLE PERSONAL PROPERTY AT RETAIL, PROVIDING FOR PERMITS TO RETAILERS, PROVIDING FOR THE COLLECTING AND PAYING OF SUCH TAX, AND PRESCRIBING PENALTIES FOR VIOLATIONS OF THE PROVISIONS HEREOF.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

**SECTION 1. IMPOSITION AND RATE OF TAX.** For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of one-half of one per cent ( $\frac{1}{2}\%$ ) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City of Sacramento on or after July 13, 1949. The license tax imposed by the provisions of this ordinance is in addition to any and all other taxes imposed by any other ordinance of the City of Sacramento.

**SECTION 2. TAX LEVIED IN SAME MANNER AS STATE TAX.** The tax hereby levied, except as otherwise herein provided, is levied in the same manner, to the same extent and under the same conditions as sales taxes are levied pursuant to Part 1 of Division 2 of the California Revenue and Taxation Code, known as the "Sales and Use Tax Law," as amended and in force and effect on January 1, 1949.

**SECTION 3. ADOPTION OF STATE SALES TAX LAW BY REFERENCE. EXCEPTIONS.** All of the provisions of the "Sales and Use Tax Law," as amended and in force and effect on January 1, 1949, except the provisions thereof pertaining solely to the "Use Tax" and Sections 6051, 6052, 6053, 6066, 6067, 6068, 6069, 6070, 6071, 6451, 7052, 7056, 7101, 7102, 7151, 7152, 7153, applicable to sales of property at retail, are hereby adopted and made a part of this ordinance as though fully set forth herein, and all provisions of any other ordinance in conflict therewith are applicable to this ordinance and the tax hereby imposed; provided, however, the term "gross receipts," as used herein, does not include the amount of any tax imposed by the State of California upon or with respect to retail sales whether imposed upon the retailer or upon the consumer.

All of the provisions of the "Sales and Use Tax Law" hereby adopted, providing for the adoption of rules and regulations and for hearings on the part of the State Board of Equalization, shall be performed by the City Council of the City of Sacramento. All other provisions of the "Sales and Use Tax Law" hereby adopted, providing for the performance of official action on the part of the State Board of Equalization, shall be performed by the Assessor-Collector of the City of Sacramento.

The City of Sacramento shall be deemed substituted for the State of California whenever the State is referred to in said "Sales and Use Tax Law."

The City Attorney of the City of Sacramento shall be deemed substituted for the Attorney General whenever the Attorney General is referred to in said "Sales and Use Tax Law."

The City Controller of the City of Sacramento shall be deemed substituted for the State Controller whenever the State Controller or State Board of Control are referred to in said "Sales and Use Tax Law."

SECTION 4. EXEMPTIONS. (a) in addition to those exemptions contained in Part 1 of Division 2 of the Revenue and Taxation Code of the State of California, included in this ordinance by reference, there shall be excluded from the computation of the tax, gross receipts from:

(1) Sales made to or by the State of California or any agency department, political subdivision, district or municipal corporation thereof;

(2) Sales of property to be consumed in, or incorporated into the erection, construction, repair or alteration of either public works or buildings belonging to or being constructed by or on behalf of, or for the use of the United States Government, the State of California or any agency, department, political subdivision, district or public or municipal corporation of the State;

(3) Sales made pursuant to contracts actually executed in good faith prior to the effective date of this ordinance;

(4) Sales of meals, food and drinks sold or served on common carriers operating into, through or out of the city from or to points outside this city.

(b) No tax shall be due hereunder if a sales tax, purchase tax, use tax, or purchase and use tax imposed by any other city of the State of California has been paid on the same transaction.

SECTION 5. ADOPTION OF RULES AND REGULATIONS BY REFERENCE. INTERPRETATIONS. The rules and regulations of the State Board of Equalization as amended and in force and effect January 1, 1949, pertaining to the interpretation, administration and enforcement of the "Sales and Use Tax Law," insofar as applicable, except Rule No. 55 (Sections 2015, Title 18, California Administrative Code, Sales & Use Tax) shall apply in the interpretation of this ordinance until specifically abandoned by the rules and regulations adopted by the City Council of the City of Sacramento pursuant to this ordinance. The word "City" shall be deemed substituted for the word "State" whenever the word "State" appears in said rules and regulations.

In lieu of Rule No. 55, specifically excepted above, the following interpretations shall apply in the administration of this ordinance:

(A) The sales tax does not apply to sales of property which is:

(1) Imported into this city from a foreign country and sold by the importer in the original package in which imported.

(2) Sold to foreign purchasers for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property abroad and actually carried to a foreign destination, title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property being used or consumed in the United States. Copies of U.S. Customs Shippers' export declarations filed with the Collector of Customs must be obtained and retained by retailers to support deductions taken under this paragraph. The tax applies to the transaction if the property is diverted in transit or for any reason not actually delivered outside the City pursuant to the contract of sale or not shipped abroad by a foreign purchaser, regardless of documentary evidence held by the retailer of delivery of the property to a carrier for shipment outside the City, or to a foreign purchaser for shipment abroad.

(3) Mailed by the seller, pursuant to the contract of sale, to persons in the armed forces at points outside continental United States, notwithstanding the property is addressed in care of the Postmaster and forwarded by him to the addressee. When mail is addressed to Army Post Offices (A/P/O's) in care of the Postmaster or to naval forces addressed in care of the Postmaster, it will be presumed that it is forwarded outside California. The seller must keep records showing the names and addresses as they appear on the mailed matter and should keep evidence that the mailing was done by him.

(4) Shipped to a point outside this City pursuant to the contract of sale when the property is marked for export and delivered by the retailer to the "contracting officer," "officer in charge," "port quartermaster," or other officer of the United States for transportation and delivery to the purchaser at such a point.

(B) The sales tax does not apply to sales of airplanes, and parts and equipment for airplanes, transported to a point outside this City pursuant to the contract of sale when such property is delivered to the United States Army Corps or any other agency or instrumentality of the United States for transportation and delivery to the purchaser or someone designated by him at that point.

(C) The sales tax does not apply (either in interstate or intrastate commerce) to sales of property shipped

from a point outside the City of Sacramento to a purchaser inside the City of Sacramento, or to the retailer's agent in the City of Sacramento, for delivery to the purchaser, if none of the elements of sale, other than such delivery, takes place in the City of Sacramento.

The sales tax does apply (either in interstate or intrastate commerce) to sales of property shipped from a point outside of the City of Sacramento to a purchaser inside the City of Sacramento, or to the retailer's agent in the City of Sacramento, for delivery to the purchaser where any element of the sale, in addition to such delivery, takes place in the City of Sacramento.

"Element of Sale" is hereby defined to include solicitation of an order, the acceptance of an order, the giving of an order, whether such order is given in person, by telephone or by mail, or the payment of the purchase price.

**SECTION 6. VERBATIM EXCERPTS SHALL NOT EXCLUDE BALANCE.** The inclusion of any clause, portion or part of the "State Sales and Use Tax Law," Part 1, Division 2 of the Revenue and Taxation Code of the State of California, or the rules and regulations of the State Board of Equalization, verbatim in this ordinance shall not in or of itself be deemed to exclude any of the remaining provisions of said "Sales and Use Tax Law" or rules and regulations that are made a part hereof by reference only.

**SECTION 7. APPLICATION FOR PERMIT.** Every person desiring to engage in or conduct business as a seller within the City of Sacramento shall file with the City Assessor-Collector an application for a permit for each place of business from which taxable sales will be made. Every application for a permit shall be made upon a form prescribed by the City Assessor-Collector and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the City Assessor-Collector may require. The application shall be signed by the owner, if a natural person; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

**SECTION 8. ISSUANCE AND DISPLAY OF PERMIT.** After compliance with Section 7 of this ordinance by the applicant, the City Assessor-Collector shall grant and issue to each applicant a separate permit for each place of business from which taxable sales will be made. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein; provided, however, a change of location may be endorsed upon the permit by the City Assessor-Collector. The permit shall at all times be conspicuously displayed at the place for which issued.

**SECTION 9. PERMIT FEES.** At the time of making an application for a permit, and at the time a change of location is endorsed upon a permit, the applicant for a permit or for an endorsement of a change of location on a permit shall pay to the City Assessor-Collector a fee of \$1.00.

**SECTION 10. (a) REVOCATION OF PERMIT.** Whenever any person fails to comply with any provisions of this ordinance or any rule or regulation adopted pursuant hereto, the Assessor-Collector of the City of Sacramento, upon hearing, after giving the person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The notice may be served personally or by mail in the manner prescribed for the service of notice of a deficiency determination under the "Sales Tax Law." The City Assessor-Collector shall not issue a new permit after the revocation of a permit unless the City Assessor-Collector of the City of Sacramento is satisfied that the former holder of a permit will comply with the provisions of this ordinance and the rules and regulations adopted pursuant hereto.

**(b) APPEAL.** Any person aggrieved by any decision of an administrative officer or agency with respect to the determination of the amount of tax due, or of the suspension or revocation of any permit or permits, may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen days of such decision. The Council shall fix a time and place for hearing such appeal and the City Clerk shall give notice in writing to such person of the time and place of hearing by serving it personally or by depositing it in the United States Post Office, at Sacramento, California, postage prepaid, addressed to such person at the address appearing on his last tax return or permit.

The findings of the Council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing.

**SECTION 11. RENEWAL OF PERMIT.** A seller whose permit has been previously suspended or revoked shall pay the City Assessor-Collector a fee of \$10.00 for the renewal or issuance of a permit.

**SECTION 12. UNLAWFUL ACTS.** A person who engages in business as a seller in the City of Sacramento without a permit or permits, or after a permit has been suspended or revoked and before the renewal or issuance of a permit, and each officer of any corporation which so engages in business, is guilty of a misdemeanor.

**SECTION 13. DUE DATE.** The taxes imposed by this ordinance are due and payable to the City Assessor-Collector

on or before the last day of the month next succeeding each quarterly period, the first quarterly payment to be due and payable under this ordinance on the 1st day of October, 1949. The Assessor-Collector may require returns and payment of the amount of taxes for equarterly periods other than calendar quarters depending upon the principal place of or the nature of the business of the seller or retailer or may require returns and payment of the amount of taxes for other than quarterly periods.

SECTION 14. REIMBURSEMENT. The tax hereby imposed shall be collected by the retailer from the consumer insofar as it can be done.

SECTION 15. UNLAWFUL ADVERTISING. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that, if added, it or any part thereof will be refunded. Any person violating any provision of this section is guilty of a misdemeanor.

SECTION 16. SUIT FOR TAX. All taxes hereby levied shall be payable to the City Assessor-Collector and any civil suit for the collection thereof may be filed in any court of competent jurisdiction in the State of California, and the City Attorney of said City shall prosecute the action.

SECTION 17. RESALE CERTIFICATE. The City Assessor-Collector may at his option accept a State of California Resale Certificate as evidence that any sale is not a sale at retail, or he may in his discretion require an affidavit from the seller setting forth such information respecting such sale as he deems necessary to determine the nature of such sale.

SECTION 18. EXTENSION OF TIME. WAIVER OF COMPROMISE. The Assessor-Collector shall have power, for good cause shown, to extend for a period of not to exceed 30 days the time for making any return or paying any amount required to be paid under this ordinance, when requested so to do in writing, before the same becomes delinquent. The Assessor-Collector may, with the written approval of the City Attorney, waive or compromise any penalty or interest that would otherwise accrue under the provisions of this ordinance. The Assessor-Collector shall make and transmit to the City Council quarterly, a detailed report of any sums so waived or compromised with the reasons therefor.

SECTION 19. DISPOSITION OF PROCEEDS. All moneys collected under and pursuant to the provisions of this ordinance shall be deposited and paid into the General Fund of the City of Sacramento.

**SECTION 20. DIVULGING OF INFORMATION FORBIDDEN.**

It is unlawful for any officer or employee of the City of Sacramento having an administrative duty under this ordinance to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the City Council may, by resolution, authorize examination of the returns by Federal or State officers or employees or by the tax officers of this or any other city if a reciprocal arrangement exists. Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

**SECTION 21. PENALTIES.**

Any person required to make, render, sign or verify any report under the provisions of this ordinance, who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due and required to be paid hereunder, is guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than \$500.00 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

**SECTION 22. SAME.**

Any person, firm or corporation violating any of the terms of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than \$500.00 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

**SECTION 23. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Council of this City hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 2**

PASSED: June 13, 1949

EFFECTIVE: July 13, 1949

ATTEST:

  
CITY CLERK.

  
MAYOR.