

ORDINANCE NO. 1447, FOURTH SERIES.

AN ORDINANCE IMPOSING AN EXCISE TAX ON THE USE OR OTHER CONSUMPTION IN THE CITY OF SACRAMENTO OF TANGIBLE PERSONAL PROPERTY PURCHASED ON OR AFTER THE EFFECTIVE DATE HEREOF FOR USE OR OTHER CONSUMPTION IN THE CITY OF SACRAMENTO AND PRESCRIBING PENALTIES FOR VIOLATION 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 using or otherwise consuming in the City of Sacramento tangible personal property purchased from any retailer, a tax is hereby imposed upon every person using or otherwise consuming such tangible personal property in the City of Sacramento, at the rate of one-half of one per cent ($\frac{1}{2}\%$) of the sales price of the property purchased on or after the effective date hereof.

SECTION 2. CONFORMITY WITH STATE USE TAX LAW. The tax hereby levied, except as otherwise herein provided, is levied in the same manner and to the same extent and under the same conditions as use 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. DEFINITIONS. The following words and phrases, whenever used in this ordinance shall be construed as defined in this section unless it appears from the context that a different meaning is intended.

(a) "Sales Price" means that total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold;
2. The cost of materials used, labor or service cost, interest charged, losses, or any other expenses;
3. The cost of transportation of the property prior to its purchase. The total amount for which the property is sold includes all of the following:
 1. Any services that are a part of the sale;
 2. Any amount for which credit is given to the purchaser by the seller.

"Sales Price" does not include any of the following:

1. Cash discounts allowed and taken on sales;
2. Any part of the amount charged for property returned by consumers and which amount is refunded either in cash or credit;
3. The amount charged for labor or services rendered in installing or applying the property sold.
4. The amount of any federal tax imposed upon or with respect to retail sales whether imposed upon the retailer or upon the consumer and regardless of whether or not the amount of federal tax is stated to customers as a separate charge, and the amount of any California State sales or use tax. (The term "gross receipts" includes the amount of any manufacturer's or importer's excise tax included in the price of the property sold, even though the manufacturer or importer is also the retailer thereof, and whether or not the amount of such tax is stated as a separate charge.);
5. Transportation charges separately stated, if the transportation occurs after the purchase of the property is made.

(b) "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, subject, however, to the following exemptions:

1. It does not include the sale of that property in the regular course of business.
2. It does not include the keeping, retaining or exercising of any right or power over tangible personal property shipped or brought into this City and which is thereafter transported outside the City for principal use or consumption outside the City, and which property is actually so used or consumed;
3. It does not include the use of such property for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property which is to be transported outside the City and thereafter used principally outside the City, or which is to be subsequently sold or resold in the regular course of business.
4. It does not include the exercise of any right or power over tangible personal property incident to ownership of that property if such property was purchased for principal use or consumption outside the City and is so used or consumed.
5. It does not include the use of tangible personal property actually employed in the transportation or transmission of persons, property, gas, electricity, or communications in interstate, intrastate or foreign commerce by persons engaged in the business of transporting or transmitting such persons, property, gas, electricity, or communications in interstate, intrastate or foreign commerce.

SECTION 4. STATE USE TAX LAW ADOPTED: EXCEPTIONS.

(a) All of the provisions of the Sales and Use Tax Law, Part 1, Division 2, of the Revenue and Taxation Code of the State of California, as amended, and in force and effect on January 1, 1949, except the provisions pertaining solely to the sales tax and Secs. 6001 to 6004, inclusive, 6008, 6009, 6009.1, 6011, 6201 to 6204, inclusive, 6206, 6207, 6226, 6241 to 6246, inclusive, 6355, 6357, 6403, 6453, 6459, 6481 to 6591, inclusive, 6826, 6901 to 6981, inclusive, 7101 to 7153, inclusive, are hereby adopted and made a part

of this section as though fully set forth herein, and all provisions of any other ordinance in conflict therewith are inapplicable to this ordinance and the tax hereby imposed.

(b) The word "storage" shall, for the purposes of this ordinance, be deemed deleted from those provisions of the California Revenue and Taxation Code hereby adopted by reference, it being the intention of the Council that the tax imposed by this ordinance shall not apply to the storage of tangible personal property.

(c) All of the provisions of the Revenue and Taxation Code 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.

(d) The City of Sacramento shall be deemed substituted for the State of California wherever the state is referred to in said provisions.

(e) The term "Sales Tax" as used in said provisions, shall refer to the tax imposed by Ordinance No. 1446, Fourth Series, of the City of Sacramento.

(f) The City Manager of the City of Sacramento shall be deemed substituted for the Governor wherever the Governor is referred to in said provisions.

(g) All taxes hereby levied shall be payable to the Assessor-Collector of the City of Sacramento 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 5. DUE DATE OF TAXES. The taxes imposed by this Ordinance are due and payable to the Assessor-Collector of the City of Sacramento on or before the 30th 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.

SECTION 6. DEPOSIT OF TAX MONEYS. 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 7. APPLICATION OF TAX. Except as otherwise specifically exempted, the tax hereby imposed applies to all tangible personal property purchased from a retailer and located in this City; provided, however, that if the purchaser proves to the satisfaction of the Assessor-Collector that the property was purchased prior to the effective date of this ordinance, or was not purchased for use or consumption in this City and has not been nor will be so used or consumed, he shall be relieved of liability to pay the tax.

SECTION 8. AUTHORIZATION FOR RETAILER TO COLLECT TAX. Any retailer may apply to the Assessor-Collector for authorization to collect the tax hereby imposed from any person purchasing property from such retailer, the use or consumption of which is taxable hereunder. Upon receipt of any application in such form as required by him, the Assessor-Collector may authorize the applicant to make such collections and to forward the same to the Assessor-Collector.

SECTION 9. LIABILITY FOR TAX. Every person using or otherwise consuming in this City tangible personal property purchased from a retailer is liable for the tax; provided, however, no tax shall be due hereunder if the tax is imposed by Ordinance No. 1446 Fourth Series has been paid on the sale of such property. His liability is not extinguished until the tax has been paid to this City, except that a receipt from a retailer, authorized pursuant to Section 8 hereof given to the purchaser pursuant to Section 10 hereof, is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

SECTION 10. PAYMENT OF TAX. Every retailer who is authorized by the Assessor-Collector to collect the tax imposed by this ordinance and who makes sales of tangible personal property for use or other consumption in this City not exempted under the provisions of this ordinance, may collect the tax from the purchaser at the time of making the sale, or, if the use or other consumption of the tangible personal property is not then taxable hereunder, at the time the use or other consumption becomes taxable. Upon collecting the tax the retailer shall give to the purchaser a receipt therefor in the manner and form prescribed by the Assessor-Collector. The tax so collected by the retailer constitutes a debt owed by the retailer to the City, and it shall be unlawful for such retailer to fail to pay the same to the City in the manner and at the times elsewhere provided in this ordinance.

SECTION 11. DISPLAY OF TAX SEPARATE FROM PRICE. The tax so collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price or other price on the sales check or other proof of sale.

COLLECTOR

SECTION 12. REGISTRATION OF RETAILER WITH ASSESSOR. Every retailer selling tangible personal property for use or other consumption in this City and which retailer maintains a place of business in this City or acts through agents located in this City, and which retailer is not registered under the provisions of Ordinance No. 1446 Fourth Series, of the City of Sacramento shall register with the Assessor-Collector and give the name and address of such agent or agents and offices or other places of business in the City.

SECTION 13. EXEMPTION. In addition to those exemptions contained in Part 1 of Division 2 of the California Revenue and Taxation Code which are incorporated into this ordinance by reference, there shall be excluded from the computation of the tax the sales price of:

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

(2) Purchases of tangible personal property to be used in connection with 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, State of California, or any agency, department, political subdivision, district or public or municipal corporation of the State.

(3) Purchases made pursuant to contracts actually executed in good faith prior to July 13, 1949.

(4) Purchases of motor vehicle fuel, the distribution of which in the State of California is subject to the tax imposed by Part 2 of Division 2 of the California Revenue and Taxation Code, except that users of motor vehicle fuel on which the Motor Vehicle Fuel Tax is refunded shall be liable for the tax imposed by this ordinance at the time and in the manner herein provided.

SECTION 14. RESALE CERTIFICATE. The Assessor-Collector may at his option accept a State of California re-sale certificate as evidence that any sale is not a sale for use or consumption, or he may in his discretion require an affidavit from the buyer setting forth such information respecting such sale as he deems necessary to determine the nature of such sale.

SECTION 15. COMINGLED GOODS. If the purchaser of fungible goods comingles with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the comingled mass cannot be determined and thereafter withdraws for use a part of such comingled goods, his withdrawals shall be deemed to be from the goods not so purchased until a quantity of comingled goods equal to the quantity of goods not so purchased but so comingled has been withdrawn.

SECTION 16. RETURNS. INFORMATION REQUIRED. Each return filed by a retailer shall show the total sale price of the property sold by him during the reporting period in respect of which he collected the tax hereby imposed. Each return filed by a purchaser shall show the total sale price of the property purchased by him during the reporting period in respect of which a tax is due hereunder.

All returns shall also show the amount of the taxes for the period covered by the return and such other information as the Assessor-Collector deems necessary for the proper administration of this ordinance.

SECTION 17. EXTENSION OF TIME FOR FILING RETURN AND PAYING TAX; PENALTIES.

(a) The Assessor-Collector for good cause may extend for not more than 30 days the time for making any return or paying any

sum required to be paid hereunder. The extension may be granted at any time provided a written request therefor is filed with the Assessor-Collector prior to the delinquency date.

(b) All taxes payable hereunder shall be deemed delinquent if not paid within the time required. Whenever any tax required to be paid by this ordinance is not paid on or before the date on which it becomes delinquent a penalty of ten percent of the amount due shall be imposed and an additional penalty of five per cent of the original tax shall be added at the close of business on the last day of each calendar month thereafter. Every penalty shall become a part of the tax imposed by this section. In no case, however, shall the total penalty exceed 50 per cent of the original tax.

SECTION 18. ASSESSOR-COLLECTOR TO ADMINISTER.

(a) The Assessor-Collector shall administer and enforce the provisions of this ordinance and, with the approval of the City Attorney, shall prescribe, adopt and enforce reasonable rules and regulations for the purpose of administering and enforcing this ordinance. Such rules and regulations may, among other things, require each person affected by this ordinance to keep such records, receipts, invoices and other pertinent papers as the Assessor-Collector may deem necessary for the purposes of administering and enforcing this ordinance.

(b) Inasmuch as this ordinance is patterned after the use tax provisions of the Revenue and Taxation Code of the State of California, and the State Board of Equalization has made various rules and regulations pertaining to the interpretation, administration and enforcement of such provisions of the Revenue and Taxation Code, it may be reasonably assumed that the City of Sacramento will be confronted with many of the problems dealt with in the State rules and regulations, each such rule and regulation insofar as applicable, shall apply in the interpretation of this ordinance until specifically abandoned by rules and regulations adopted by the Assessor-Collector pursuant to the authority of this ordinance.

SECTION 19. INCLUSION OF STATE USE TAX LAW. 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 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 that are made a part hereof by reference only.

SECTION 20. VIOLATION OF ORDINANCE A MISDEMEANOR. Any person required to make, render, sign or verify any report or return 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, or who fails to make any required return to the Assessor-Collector, or who fails to pay any tax imposed by the provisions of this ordinance, or who violates any of the other terms of this ordinance, is guilty of a misdemeanor.

SECTION 21. VALIDITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance, including but not limited to any exemption 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.

PASSED: June 13, 1949

EFFECTIVE: July 13, 1949

Beale C. Coe
MAYOR.

ATTEST:

H. G. Drulor
CITY CLERK.