

ORDINANCE NO. 186

AN ORDINANCE LEVYING AND ASSESSING AN EXCISE TAX OF TWO PERCENT (2%) OF THE PURCHASE PRICE UPON THE STORAGE, USE OR CONSUMPTION OF TANGIBLE, PERSONAL PROPERTY PURCHASED OUTSIDE THE STATE OF OKLAHOMA AND BROUGHT INTO THE CITY OF STILWELL, OKLAHOMA; PROVIDING EXEMPTIONS THERETO; SPECIFYING WHEN SUCH TAXES ARE PAYABLE; PROVIDING SUCH TAXES CONSTITUTE SUPERIOR CLAIMS; PROVIDING COLLECTION OF TAX BY RETAILER OR VENDOR; PROVIDING COLLECTION OF TAX BY RETAILER OR VENDOR NOT MAINTAINING PLACE OF BUSINESS WITHIN STATE OR BOTH WITHIN AND WITHOUT STATE; PROVIDING FOR REVOKING PERMITS; ESTABLISHING REMUNERATIVE DEDUCTIONS ALLOWED VENDORS OR RETAILERS OF OTHER STATES; PROVIDING INTEREST AND PENALTIES FOR DELINQUENT PAYMENT OF TAXES; PROVIDING FOR WAIVER OF INTEREST AND PENALTIES; PROVIDING FOR SUBMISSION OF CLAIM FOR REFUND OR ERRONEOUS PAYMENTS; PROVIDING PENALTIES FOR FRAUDULENT RETURNS; PROVIDING THAT RECORDS SHALL BE CONFIDENTIAL AND PRIVILEGED; PROVIDING THAT TAXES COLLECTED HEREUNDER SHALL BE CUMULATIVE; DEFINING TERMS; DEFINING TAX COLLECTOR; ESTABLISHING CLASSIFICATION OF TAX PAYERS; RATIFYING SUBSISTING STATE PERMITS; ESTABLISHING PURPOSES FOR WHICH REVENUES COLLECTED HEREUNDER SHALL BE EXPENDED; ESTABLISHING CITATION OF THE ORDINANCE; AND ESTABLISHING THE EFFECTIVE DATE OF THE ORDINANCE.

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

SECTION 1. EXCISE TAX ON STORAGE, USE OR OTHER CONSUMPTION OF INTANGIBLE, PERSONAL PROPERTY LEVIED.

There is hereby levied and there shall be paid by every person storing, using or otherwise consuming, within the municipality, tangible, personal property purchased or brought into this municipality, an excise tax on the storage, use or other consuming with the municipality of such property at the rate of two percent (2%) of the purchase price of such property. Such tax shall be paid by every person storing, using or otherwise consuming, within the municipality, tangible, personal property purchased or brought into the municipality. The additional tax levied hereunder shall be paid at the time of importation or storage of the property within the municipality and shall be assessed only to property purchased outside Oklahoma; provided, that the tax levied herein shall not be levied against tangible, personal property intended solely for use outside the municipality, but which is stored in the municipality pending shipment outside the municipality or which is temporarily retained in the municipality for the purpose of fabrication repair testing, alteration, maintenance or other service. Any person liable for payment of the tax authorized herein may deduct from such tax any local or municipal sales tax previously paid on such goods or services; provided, that the amount deducted shall not exceed the amount that would have been due if the taxes imposed by the municipality had ben levied on the sale of such goods and services.

SECTION 2. EXEMPTIONS.

The provisions of this Ordinance shall not apply:

1. in respect to the use of an article of tangible, personal property brought into the municipality by a nonresident individual, visiting in this municipality, for his or her personal use or enjoyment while within the municipality;
2. in respect to the use of tangible, personal property purchased for resale before being used;
3. in respect to the use of any article of tangible, personal property on which a tax, equal to or in excess of that levied by both the Oklahoma Use Tax Code and the City of Stilwell Use Tax Ordinance, has been paid by the person using such tangible, personal property in the municipality, whether such tax was levied under the laws of Oklahoma or some other state or municipality of the United States. If any article of tangible, personal property has already been subjected to a tax by Oklahoma or any other state

- or municipality in respect to its sale or use, in an amount less than the tax imposed by both the Oklahoma Use Tax Code and the City of Stilwell Use Tax Ordinance, the provisions of this Ordinance shall also apply to it by a rate measured by the difference only between the rate provided by both the Oklahoma Use Tax Code and the City of Stilwell Use Tax Ordinance and the rate by which the previous tax upon the sale or use was computed. Provided, that no credit shall be given for taxes paid in another state or municipality if that state or municipality does not grant like credit for taxes paid in Oklahoma and the municipality;
4. in respect to the use of the machinery and equipment purchased and used by persons establishing new manufacturing or processing plants in the municipality, and machinery and equipment purchased and used by persons for the operation of manufacturing plants already established in the municipality. 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 under the Sales Tax Code of the municipality. The term "manufacturing plants" shall mean those establishments primarily engaged in manufacturing or processing operations and generally recognized as such;
 5. in respect to the use of tangible, personal property now specifically exempted from taxation under the Sales Tax code of the Municipality;
 6. in respect to the use of any article of tangible, personal property brought into the municipality by an individual with intent to become a resident of this municipality, where such personal property is for such individual's use and enjoyment;
 7. in respect to the use of any article of tangible, personal property used or to be used by commercial airlines or railroads;
 8. in respect to livestock purchased outside Oklahoma and brought into this municipality for feeding or breeding purposes, and which is later resold.

SECTION 3. TIME WHEN DUE - RETURNS - PAYMENT

The tax levied by this Ordinance is due and payable at the time and in the manner and form prescribed for payment of the State Use Tax under the Tax Code of the State of Oklahoma.

SECTION 4. 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 5. COLLECTION OF TAX BY RETAILER OR VENDOR.

Every retailer or vendor maintaining places of business both within and without the State of Oklahoma, and making sales of tangible, personal property from a place of business outside this state for use in this municipality shall, at the time of making such sales, collect the use tax levied by this Ordinance from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the Tax Commission, if the Tax Commission shall, by regulation, require such receipt. Each retailer or vendor shall list with the Tax Commission the name and address of all his agents operating in this municipality and the location of any and all distribution or sales houses or offices or other places of business in this City.

SECTION 6. COLLECTION OF TAX BY RETAILER OR VENDOR NOT MAINTAINING A PLACE OF BUSINESS WITHIN STATE OR BOTH WITHIN AND WITHOUT STATE - PERMITS.

The Tax Commission may, in its discretion, upon application, authorize the collection of the tax herein levied by any retailer or vendor not maintaining a place of business within this State but who makes sales of

tangible, personal property for use in this municipality and by the out-of-state place of business of any retailer or vendor maintaining places of business both within and without Oklahoma and making sales of tangible, personal property at such out-of-state place of business for use in this municipality. Such retailer or vendor may be issued, without charge, a permit to collect such taxes, by the Tax Commission, in such manner and subject to such regulations and agreements as it shall prescribe. When so authorized, it shall be the duty of such retailer or vendor to collect the tax upon all tangible, personal property sold to his knowledge for use within this municipality. Such authority and permit may be cancelled when at any time the Tax Commission considers that such tax can more effectively be collected from the person using such property in this municipality. Provided, however, that in all instances where such sales are made or completed by delivery to the purchaser in this municipality by the retailer or vendor in such retailer's or vendor's vehicle, whether owned or leased (not by common carrier), such sales or transactions shall continue to be subject to applicable municipality Sale Tax at the point of delivery, and the tax shall be collected and reported under the taxpayer's sales tax permit number accordingly.

SECTION 7. REVOKING PERMITS.

Whenever any retailer or vendor not maintaining a place of business in this State, or both within and without this State, and authorized to collect the tax herein levied, fails to comply with any of the provisions of this Ordinance or the Oklahoma Use Tax Code or any order, rules or regulations of the Tax Commission, the Tax Commission may, upon notice and hearing as provided for in 68 O.S. 1981, Section 1408, by order revoke the use tax permit, if any, issued to such retailer or vendor and, if any such retailer or vendor is a corporation authorized to do business in this State, may, after notice and hearing above provided, cancel said corporation's license to do business in this state and shall issue a new license only when such corporation has complied with the obligations under this Ordinance, the Oklahoma Use Tax Code, or any order, rules or regulations of the Tax Commission.

SECTION 8. REMUNERATIVE DEDUCTIONS ALLOWED VENDORS AND RETAILERS OF OTHER STATES.

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

SECTION 9. INTEREST AND PENALTIES - DELINQUENCY.

Section 217 of Title 68 O.S. 1981 is hereby adopted and made part of this Ordinance, and interest and penalties at the rates and in the 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 retailer or vendor to make or 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 such delinquency continues for a period of five (5) days, the retailer or vendor shall forfeit his claim to any discount allowed under this Ordinance.

SECTION 10. WAIVER OF INTEREST AND PENALTIES.

The interest or penalty or any portion thereof accruing by reason of a retailer's or vendor's failure to pay the municipality Tax herein levied may be waived or remitted in the same manner as provided for said waiver or remittance as applied in administration of the State Use Tax provided in 68 O.S. 1981, Section 227, and, to accomplish the purpose of this section, the applicable provisions of said Section 227 are hereby adopted by reference and made a part of this Ordinance.

SECTION 11. ERRONEOUS PAYMENTS - CLAIM FOR REFUND.

Refund of erroneous payment of the municipality Use 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 Use Tax as set forth in 68 O.S. 1981, Section 227, and, to accomplish the purpose of this section, the applicable provisions of said Section 227 are hereby adopted by reference and made a part of this Ordinance.

SECTION 12. 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 and fraudulent report for the purpose of avoiding or escaping payment of any tax or portion thereof rightfully due under this Ordinance, shall be an offense, and, upon conviction thereof, the offending taxpayer shall be punished by a fine of not more than One Hundred Dollars (\$100.00) and costs. Each day of noncompliance with this Ordinance shall constitute a separate offense.

SECTION 13. RECORDS CONFIDENTIAL.

The confidential and privileged nature of the records and files concerning the administration of the municipality Use Tax is legislatively recognized and declared, and, to protect the same, the provisions of 68 O.S. 1981, Section 205, of the State Use Tax Code, and each subsection thereof, is hereby adopted by reference and made fully effective and applicable to administration of the municipality Use Tax as if herein set forth in full.

SECTION 14. PROVISIONS SEVERABLE.

The provisions hereof are hereby declared to be severable, and, if any section, paragraph, sentence or clause of this Ordinance is for any reason held invalid or inoperative by any court of competent jurisdiction, such decision shall not affect any other section, paragraph, sentence or clause hereof.

SECTION 16. DEFINITIONS.

The definitions of words, terms and phrases contained in the Oklahoma Use Tax Code, Section 1401, 68 O.S. 1981, are hereby adopted by reference and made a part of this Ordinance. In addition thereto, the following words and terms shall be defined as follows:

1. City shall mean the City of Stilwell, Oklahoma
2. Transaction Shall mean sale

SECTION 17. TAX COLLECTOR DEFINED.

The term "tax collector" as used herein means the department of the municipality 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 18. CLASSIFICATION OF TAXPAYERS.

For the purpose of this Ordinance, the classification of taxpayers hereunder shall be as prescribed by State law for the purposes of the Oklahoma Use Tax Code.

SECTION 19. SUBSISTING STATE PERMITS.

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

SECTION 20. PURPOSES OR REVENUES.

It is hereby declared to be the purpose of this Ordinance to provide revenues for the support of the functions of the municipal government of the

municipality, and any and all revenues derived hereunder may be expended by the Governing Body of the municipality for any purpose for which funds may be lawfully expended as authorized.

SECTION 21. CITATION AND CODIFICATION.

This Ordinance shall be known and may be cited as "City of Stilwell Use Tax Ordinance" and shall be codified as No. 186 of the Ordinances of the City.

SECTION 22. EFFECTIVE DATE.

That an emergency exists for the preservation of the public peace, health and safety by reason whereof this Ordinance shall take effect immediately from and after its passage, approval and publication.

PASSED and APPROVED and the EMERGENCY CLAUSE RULED ON SEPARATELY this 6th day of July, 1987.

(Seal)

H.E. ZIMMERMAN
Mayor

ATTEST: SUE CATRON
City Clerk

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