

ORDINANCE NO. 2009-22

AN ORDINANCE PROVIDING FOR THE ADMINISTRATION OF AN ADVERTISING AND TOURISM PROMOTION TAX ON THE GROSS RECEIPTS OF CERTAIN INDUSTRIES RELATED TO THE ADVERTISING AND TOURISM PROMOTION OF THE CITY OF SEARCY, ARKANSAS; PROVIDING FOR THE GOVERNANCE OF THE CITY OF SEARCY, ARKANSAS, ADVERTISING AND TOURISM PROMOTION COMMISSION; PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND FOR OTHER PURPOSES.

WHEREAS, The City of Searcy, Arkansas, has levied a tax upon the gross receipts or gross proceeds derived from: (a) renting, leasing, or otherwise furnishing hotel, motel, or short-term rental accommodations for sleeping, meeting, or party room facilities for profit but excluding accommodations of thirty (30) days or more; and (b) restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, or similar businesses from the sale of prepared food and beverages for on-premises or off-premises consumption, but excluding the gross receipts or gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3), as may be amended from time to time; and

WHEREAS, The City of Searcy, Arkansas, has created an Advertising and Tourism Promotion Fund; and

WHEREAS, The City of Searcy, Arkansas, has created an Advertising and Tourism Promotion Commission and appointed members to that Commission; and

WHEREAS, The Searcy City Council has determined that this ordinance is necessary to provide for the administration of the Advertising and Tourism Promotion Fund and for the governance of the Advertising and Tourism Promotion Commission and for the collection of the tax levied by the City of Searcy related thereto; and

WHEREAS, The Searcy City Council finds that the need to provide for the administration of this fund on or before July 1, 2009, is necessary for the preservation of the public health, safety and welfare and that an emergency exists.

NOW THEREFORE, be it ordained by the City Council of the City of Searcy, Arkansas, to-wit:

Section 1. The Code of Ordinances of the City of Searcy, Arkansas, is hereby amended by adding a Chapter to the number Article 17, which said Chapter reads as follows:

“17-17. Administration of Advertising and Tourism Promotion Levy.

17-17-1. Definitions. For the purposes of this Section, the following terms shall have the following definitions.

- (a) **Commission** means the Searcy Advertising and Tourism Promotion Commission Created in Section 17-16 of the Searcy Code of Ordinances.
- (b) **Person** means any natural person, firm, corporation or other business entity.
- (c) **Taxpayer** means any person liable to remit the advertising and tourism promotion tax as required by Section 17-16 of the Searcy Code of Ordinances.
- (d) **A&P tax** means the advertising and promotion tax levied pursuant to Section 17-16 of the Searcy Code of Ordinances.

17-17-2. Administration and regulations The administration of A&P Tax is vested in the Commission and the Commission shall promulgate rules and regulations and prescribe all forms to the Mayor of the City of Searcy as are necessary or required for the enforcement and collection of the A&P tax.

17-17-3. Permits

- (a) It shall be unlawful for any person subject to the A&P tax to transact business within the city prior to the issuance and receipt of an A&P tax permit from the Commission.
- (b) A separate A&P tax permit must be obtained from the Commission for each location at which the person conducts a business which is subject to the A&P tax.
- (c) An A&P tax permit shall have no stated term.

17-17-4. Application for permit Any person subject to the A&P tax transacting business in the city shall file with the Commission through City Hall an application for an A&P tax permit to conduct that business, the form and contents of which application shall be as prescribed by the Commission from time to time.

17-17-5. Permits not assignable, display required and expiration

- (a) The A&P tax permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the location thereon designated.
- (b) The A&P tax permit shall at all times be conspicuously displayed at the location thereon designated.

- (c) The A&P tax permit shall expire at the time of cessation of the business of the person at the location designated thereon.
- (d) It shall be unlawful for any person subject to the A&P tax to transact business within the City when their A&P tax permit has expired.

17-17-6. Discontinuance of business – unpaid taxes

- (a) Any person operating under an A&P tax permit, upon discontinuance of the business at the location designated thereon, shall return the A&P tax permit to the Commission for cancellation together with remittance of any unpaid and accrued A&P taxes.
- (b) Failure to surrender the A&P tax permit and pay any and all accrued A&P taxes shall be sufficient cause for the Commission, through its designated representative, to refuse the issuance of any A&P tax permit in the future to the person.
- (c) In the case of the sale of any business which is subject to the A&P tax, the A&P tax shall be deemed to be due and payable at the time of the sale of fixtures and equipment incident to business and shall constitute a lien against the said fixtures and equipment and inventory in the hands of the purchaser of the business until all A&P taxes have been paid.

17-17-7 Revocation or suspension - renewal

- (a) Whenever a person to whom an A&P tax permit has been issued fails to comply with any provision of this ordinance, including any rule or regulation prescribed by the Commission from time to time, the Commission, through its designated representative, shall give notice to the person of an intention to revoke the A&P tax permit.
- (b) The person may, within ten (10) days after receipt of the Notice of Intent to Revoke the A&P tax permit, apply to the Commission for a hearing. Hearing procedures are as follows:
 - (i) The hearing shall be conducted at a time and place to be designated by the Commission and the person requesting the hearing shall be entitled to introduce testimony and be represented by counsel, and the Commission shall determine at the hearing whether the person's A&P tax permit should be revoked. All

decisions shall be by a majority vote of all commissioners of the Commission.

- (ii) Failure of the person to appear at the hearing shall be grounds for the Commission to revoke the Taxpayer's A&P tax permit.
- (iii) The person shall be entitled, within thirty (30) days from the date of the revocation of the A&P tax permit, to appeal to the Circuit Court of White County, Arkansas, where the action shall be tried *de novo*.
- (c) An appeal shall lie from the Circuit Court to the Supreme Court of Arkansas as in other cases provided by law.
- (d) Any revoked or suspended permit may be renewed upon the filing of proper returns and the payment of all A&P taxes due or removal of any other cause of revocation or suspension.
- (e) It shall be unlawful for any person subject to the A&P tax to transact business within the City of Searcy when the A&P tax permit is revoked or suspended.

17-17-8 Preparation of returns – payment of A&P Tax and discount for prompt payment

- (a) The A&P tax shall be due and payable as of the first day of each calendar month by the Taxpayer and shall be delinquent if not paid on or before the first day of the next calendar month.
- (b) It shall be the duty of the Taxpayer on or before the twentieth (20th) day of each calendar month to deliver to the Commission, upon forms prescribed and furnished by the Commission, returns under oath showing the total combined gross receipts which are subject to the A&P tax for the preceding calendar month and the amount of tax due. The tax due shall be remitted with the return.
- (c) The returns shall contain such further information as the Commission may require by a full vote of the Commission and, once the Taxpayer has become liable for the payment of the A&P tax, the Taxpayer must continue to file a return, even though no tax may be due, until such time as the Taxpayer surrenders the A&P tax permit.

- (d) If not paid on or before the twentieth (20th) day of each calendar month, the full amount of the A&P tax shall be due from that date; provided, however, no penalty for delinquency shall be assessed if payment thereof is made on or before the first day of the calendar month next following.
- (e) If the return is delivered on or before the twentieth (20th) day of the calendar month, the Taxpayer may remit therewith to the Commission ninety-eight (98%) percent of the A&P tax due on or before the twentieth (20th) of that calendar month. A return is "delivered" on the date it is postmarked if it is delivered by U.S. Postal Service.
- (f) Failure of the Taxpayer to remit the A&P tax on or before the twentieth (20th) of each calendar month shall cause the Taxpayer to forfeit his claim to the discount and the Taxpayer must remit to the Commission one hundred (100%) percent of the amount of the A&P tax due, plus any penalty and interest accrued thereon.

17-17-9

Additional penalties and tax

- (a) If a Taxpayer shall fail to comply with certain provisions of this ordinance, then the following penalties and additions to tax shall be applicable:
 - (i) In the case of a Taxpayer's failure to file the A&P tax return and pay the tax due on or before the date prescribed, determined with regard to any extension of time for filing thereof, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be added to the amount required to be shown as tax on the A&P tax return five percent (5%) of the amount of the A&P tax if the failure is not more than one (1) month, with an additional five percent (5%) for each additional month or fraction thereof during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate;
 - (ii) In addition to any penalty assessed hereunder, simple interest on any unpaid A&P tax shall be assessed at the rate of (10%) percent per annum from the delinquency date.

17-17-10

Examination and investigations

- (a) In the administration of this ordinance, the Commission or its designated representative, for the purpose of determining the accuracy of a return or fixing any liability hereunder, may make an examination or investigation of the place of business, the tangible personal property, equipment, and facilities, and the books, records, papers, vouchers, accounts, and documents of any Taxpayer or other person. Every Taxpayer or other person and his agents and employees shall exhibit to the Commission or its designated representative these places of business and items and facilitate any examination or investigation.
- (b) No Taxpayer shall be subjected to unnecessary examination or investigations, and only one (1) inspection of a Taxpayer's books of account may be made for each taxable year unless the Taxpayer requests otherwise or unless the Commission or its designated representative, after investigation, notifies the Taxpayer in writing that an additional inspection is necessary.
- (c)
 - (i) When conducting an investigation or an audit of any Taxpayer, the Commission or its designated representative may, in its discretion, examine the records and files of any person, except where privileged by law, any other business, institution, financial institution, the records of any state agency, agency of the United States Government, or agency of any other state where permitted by agreement or reciprocity.
 - (ii) The Commission or its designated representative may compel production of these records by summons. A summons may be served directly by the Commission, its designated representative, or the Searcy Police Department.
- (d) In the administration of this ordinance, the Commission or its designated representative may:
 - (i) Administer oaths, conduct hearings, and compel by summons the attendance of witnesses, testimony, and the production of any books, records, papers, or other data of any person or Taxpayer; or

(ii)

- A. Examine under oath any person regarding the business of any Taxpayer concerning any matter incident to the administration of this ordinance.
- B. The fees of witnesses required by the Commission or its designated representative to attend any hearing shall be the same as those allowed to the witnesses appearing before circuit courts of this state. The fees shall be paid in the manner provided for the payment of other expenses incident to the administration hereof.

(e)

- (i) The investigation may extend to any person that the Commission or its designated representative determines has access to information which may be relevant to the examination or investigation.
- (ii) When any summons requiring the production of records as described in this subsection is served on a third-party record keeper, written notice of the summons shall be mailed to the Taxpayer that his records are being summoned at least fourteen (14) days prior to the date fixed in the summons as the day for the examination of the records.
- (iii) Notice to the Taxpayer required by this section is sufficient if it is mailed by certified mail to the last address on record with the Commission.
- (iv) When the Commission or its designated representative have the power to issue a summons for its own investigative or auditing purposes, then the Commission shall honor any reasonable request by any Taxpayer to issue a summons on the Taxpayer's behalf.

(f)

- (i) The Commission or the Taxpayer may apply to a court of competent jurisdiction in White County, Arkansas, for an order compelling the production of the summoned records.

(ii) Failure to comply with the order of the court for the production of records may be punished by the court as for contempt.

(g)

(i) The cost of producing records of a third party required by a summons shall be borne by the Taxpayer if he requests the summons to be issued.

(ii) If the Commission or its designated representatives initiate the summons for third-party records, the Commission shall bear the reasonable cost of producing the records. The Commission or its designated representatives may later assess the cost against any delinquent or deficient Taxpayer as determined by the records.

17-17-11 Time limitation for assessments, collection, refunds, and prosecution

(a) Except as otherwise provided in this ordinance, no assessment of the A&P tax shall be made after the expiration of three (3) years from the date the return was required to be filed or the date the return was filed, whichever period expires later. The Commission shall not begin court proceedings after the expiration of the three-year period unless there has been a previous assessment for the collection of the tax.

(b) Upon written agreement of the Commission and the Taxpayer, the time within which the Commission may make a final assessment, as provided herein, may be extended to a date mutually agreed upon in the written agreement.

(c) Where, before the expiration of the time prescribed for the assessment of the tax or of extensions thereof, both the Commission and the Taxpayer have consented in writing to an assessment after that time, then the A&P tax may be assessed at any time prior to the expiration of time agreed upon.

(d) In the case of a fraudulent return or failure to file a report or return required hereunder, the Commission may compute, determine, and assess the estimated amount of A&P tax due from any information

in its possession or may begin an action in court for the collection of the tax without assessment, at any time.

- (e) Whenever a Taxpayer requests an extension of time for filing any return required hereunder, the limitation of time for assessing any tax shall be extended for a like period.
- (f) Where the assessment of the A&P tax has been made within the period of limitation properly applicable thereto, the A&P tax may be collected by levy or proceeding in court, but only if the levy is made or the proceeding is begun within ten (10) years after the date of the assessment of the tax.
- (g) No person shall be prosecuted, tried, or punished for any of the various criminal offenses arising under the provisions of this ordinance unless the indictment of the Taxpayer is instituted within six (6) years after the Commission of the offense.

17-17-12 Notice requirements

- (a)
 - (i) The Commission shall give a Taxpayer notice of any assessment, demand, decision, or hearing before the Commission or its designated representative which directly involves that Taxpayer.
 - (ii) All notices required to be given by the Commission to a Taxpayer shall be either served by personal service or sent by mail to the Taxpayer's last address on record with the Commission. If this mail is returned unclaimed or refused, then proper notice shall be deemed to have been served and given, and the Commission may take any action permitted by this ordinance or otherwise by law.
 - (iii) All notice of final assessment hereunder shall be sent by certified mail, return receipt requested.
- (b) The Taxpayer, when giving notice to the Commission, shall give notice either by mail or by personal service on the Commission. The notice the Taxpayer gives shall be effective when postmarked or, in case of personal service, when so served.

- (c) The Commission and any Taxpayer may, by written agreement, provide for any other reasonable means of giving notice.
- (d) All notices shall be in writing.

17-17-13 Assessment and collection of taxes generally

- (a)
 - i. The Commission or its designated representatives are authorized and required to make the inquiries, determinations, and assessments of the A&P tax including interest, additions to taxes, and assessable penalties, imposed hereby.
 - ii. The assessment shall be made by recording the liability of the Taxpayer in the offices of the Commission in accordance with rules or regulations prescribed by the Commission.
 - iii. Upon request of the Taxpayer, the Commission shall furnish the Taxpayer a copy of the record of the assessment.
- (b)
 - i. The Commission shall collect all A&P taxes imposed by law.
 - ii. As soon as practicable after the making of assessment of the A&P tax, the Commission shall give notice to each person liable for the unpaid tax, stating the amount and demanding payment within ten (10) days.
 - iii. Upon receipt of notice and demand from the Commission, the person liable for the tax shall pay the stated amount including any interest, additions to tax, and assessable penalties at the place and time stated in the notice and demand.

17-17-14 Proposed assessments

(a)

- i. If any Taxpayer fails to file any return as required hereunder, the Commission, from any information in its possession or obtainable by it, may determine the correct amount of tax for the taxable period. If a return has been filed, the Commission or its designated representative shall examine the return and make any audit or investigation that is considered necessary.

- ii. When no return has been filed and the Commission determines that there is an A&P tax due for the taxable period, or when a return has been filed and the Commission determines that the A&P tax disclosed by the return is less than the tax disclosed by its examination, the Commission shall propose the assessment of additional tax plus penalties, as the case may be, and shall give notice of the proposed assessment to the Taxpayer. The notice shall explain the basis for the proposed assessment and shall state that a final assessment, as provided for herein, will be made if the Taxpayer does not protest such proposed assessment as provided hereby. The Taxpayer does not have to protest the proposed assessment to later be entitled to exercise the right to seek a judicial review of the assessment.

- iii. Any demand for additional payment of the A&P tax which is made as the result of a verification of a mathematical error on the return shall not be deemed to be a proposed assessment under the provisions of this section and shall not be subject to the hearing or appeal provisions of this section.

17-17-15 Taxpayer relief

- (a) Any Taxpayer who wishes to seek administrative relief from any proposed assessment of taxes or proposed notice of disallowance of a claim for refund by the Commission shall follow the procedure provided by this section.

(b)

- i. A Taxpayer may at his option either request the Commission to consider his request for relief solely upon written documents furnished by the Taxpayer or upon the written documents and any evidence produced by the Taxpayer at a hearing.
- ii. A Taxpayer who requests the Commission to render its decision based on written documents is not entitled by law to any other administrative hearing prior to the Commission's rendering of its decision and, if necessary, the issuing of a final assessment and demand for payment or issuing of a certificate of indebtedness.

(c) Within thirty (30) days after service of notice of the proposed assessment, the Taxpayer may file with the Commission a written protest under oath, signed by himself or his authorized agent, setting forth the Taxpayer's reasons for opposing the proposed assessment.

(d) The Commission may, in its discretion, extend the time for filing a protest for any period of time not to exceed an additional ninety-day (90) period.

17-17-16 Hearing on proposed assessments

(a)

- i. The Commission or its designated representative shall serve as hearing officer to review all written protests submitted by Taxpayers, hold all hearings, and make written findings as to the applicability of the proposed assessment.
- ii. The hearing on written and oral protests and determinations made by the hearing officer shall not be subject to the provisions of the Arkansas Administrative Procedure Act, Arkansas Code Annotated §§ 25-15-201, *et seq.*, as may be amended from time to time.

(b) The actual hearing on the written protest shall be held by the Commission in its offices or at any other place designated by the Commission and including, but not limited to, the chambers of the Searcy City Council, with notice of such location to be afforded to any person subject to such hearing.

(c)

- i. The hearing officer shall set the time and place for hearing on the written protest and shall give the Taxpayer reasonable notice thereof.
- ii. At the hearing, the Taxpayer may be represented by an authorized representative and may present evidence in support of his position.
- iii. After the hearing, the hearing officer shall render its decision in writing and shall serve copies upon both the Taxpayer and the Commission.

(d)

- i. If the proposed assessment is sustained, in whole or part, the Taxpayer may request in writing, within twenty (20) days of the mailing of the decision, that the Commission revise the decision.
- ii. If the Commission refuses to make a revision or if the Taxpayer does not make a request for revision, then a final assessment shall be made upon the final determination of the hearing officer or the Commission.
- iii. A Taxpayer may seek relief from the final decision of the hearing officer or the Commission on a final assessment of a tax deficiency by following the procedure set forth in this section.

(e)

- (i) In addition to the hearing procedures set out in this subsection, the Commission or the hearing officer may hold administrative hearings by telephone, video conference, or other electronic means if the Commission or the hearing officer determines that conducting the hearing in such a manner:
 - A. is in the best interest of the Taxpayer and the Commission;

- B. is agreed to by both parties;
 - C. is not fiscally unsound or administratively burdensome;
 - D. adequately protects the confidentiality of the Taxpayer's information; and
 - E. is in compliance with state law.
- (ii) The Commission is authorized to contract with third parties for all services necessary to conduct hearings by telephone, video, or other electronic means.
 - (iii) Any person who enters into a contract with the Commission to provide services necessary to conduct hearings by telephone, video, or other electronic means shall be subject to the laws providing for the confidentiality of Taxpayer records.

17-17-17 Judicial relief

- (a) Within thirty (30) days after the issuance and service on the Taxpayer of the notice and demand for payment of a deficiency in tax established by (1) an audit determination that is not protested by the Taxpayer, or (2) a final determination of the hearing officer or the Commission, a Taxpayer may seek judicial relief from the final determination by either:
 - i. Within thirty (30) days of the date of the final assessment, paying the entire amount of the A&P tax due, including any interest or penalties, for any taxable period or periods covered by the final assessment and filing suit to recover that amount within one (1) year of the date of payment. The Commission may proceed with collection activities, including the filing of a certificate of indebtedness as authorized hereunder, within thirty (30) days of the issuance of the final assessment for any assessed but unpaid A&P taxes, penalties, or interest owed by the Taxpayer for other taxable periods covered by the final assessment, while the suit for refund is being pursued by the Taxpayer for other taxable periods covered by the final assessment; or

(ii)

- A. Within thirty (30) days of the issuance and service on the Taxpayer of the notice and demand for payment, filing with the Commission a bond in double the amount of the tax deficiency due and by filing suit within thirty (30) days thereafter to stay the effect of the Commission's determination.
- B. The bond shall be subject to the condition that the Taxpayer shall file suit within thirty (30) days after filing the bond, shall faithfully and diligently prosecute the suit to a final determination, and shall pay any deficiency found by the court to be due and any court cost assessed against him.
- C. A Taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by subsection (a) of this section, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs.

- (b) Jurisdiction for a suit to contest a determination of the Commission under this section shall be in a Circuit Court in White County, where the matter shall be tried *de novo*.
- (c) The methods provided in this section shall be the sole alternative methods for seeking relief from a written decision of the Commission or the hearing officer establishing a deficiency in the A&P tax. No injunction shall issue to stay proceedings for assessment or collection of any A&P taxes.
- (d) In any court proceeding under this section, the prevailing party may be awarded a judgment for court costs.

17-17-18 Issuance of certificates of indebtedness and execution

(a)

i.

- A. If a Taxpayer does not timely and properly pursue his remedies seeking relief from a decision of the

Commission or hearing officer and a final assessment is made against the Taxpayer, or if the Taxpayer fails to pay the deficiency assessed upon notice and demand, then the Commission through its authorized representatives shall, as soon as practicable thereafter, issue to the Circuit Clerk of any county of the state in which the Taxpayer's business is located a certificate of indebtedness certifying that the person named therein is indebted to the Commission for the amount of the tax established by the Commission as due.

B. If a Taxpayer has a delinquent A&P tax liability to the Commission of less than One Thousand Dollars (\$1,000), the Commission or its hearing officer may enter into an agreement with the Taxpayer to allow the Taxpayer to pay the delinquency in installments. The Commission or its hearing officer may choose not to issue a certificate of indebtedness during the period of the installment agreement if it determines that it is in the best interest of the Commission.

ii. The Circuit Clerk shall enter immediately upon the Circuit Court judgment docket:

- A. The name of the delinquent Taxpayer;
- B. The amount certified as being due;
- C. The name of the tax; and
- D. The date of entry upon the judgment docket.

iii.

A. The entry of the certificate of indebtedness shall have the same force and effect as the entry of a judgment rendered by the Circuit Court. This entry shall constitute the Commission's lien upon the title of any real and personal property of the Taxpayer in the county where the certificate of indebtedness is recorded.

B. This lien is in addition to any other lien existing in favor of the Commission to secure payment of taxes, applicable interest, penalties, and costs. The lien is superior to other liens of any type or character attaching to the property after the date of entry of the certificate of indebtedness on the judgment docket. This lien is superior to all claims of unsecured creditors.

C. The certificate of indebtedness authorized by this subsection shall continue in force for ten (10) years from the date of recording and shall automatically expire after the ten-year period has run. Actions on the lien on the certificate of indebtedness shall be commenced within ten (10) years after the date of recording of the certificate, and not afterward.

(b)

- i. After entry of the certificate, the Circuit Clerk shall issue a writ of execution directed to the Commission, authorizing the Commission to levy upon and against all real and personal property of the Taxpayer.
- ii. The Commission shall have all remedies and may take all proceedings for the collection of the tax which may be taken for the recovery of a judgment at law.
- iii. The writ shall be issued, served, and executed in the same manner as provided for in the issuance and service of executions rendered by the Circuit Court of this state, except the Commission shall act in the place of the County Sheriff.
- iv. The Commission shall have this authority for all liens either presently filed or filed after the passage of this ordinance.

(c)

- i. Nothing in this chapter shall preclude the Commission from resorting to any other means provided by law for collecting delinquent taxes.

- ii. The issuance of a certificate of indebtedness, entry by the Clerk, and levy of execution as provided in this section shall not constitute an election of remedies with respect to the collection of the tax.
- iii. The taxes, fees, interest, and penalties imposed or levied hereby may be collected in the same way as a personal debt of the Taxpayer.
- iv. The Commission may sue to the same effect and extent as for the enforcement of a right of action for debt.
- v. All provisional remedies available in these actions are available to the Commission in the enforcement of the payment of the A&P tax.

(d)

- i. In addition to the remedies provided herein, the Commission may direct the Circuit Clerk to issue a writ of execution directed to the sheriff of any county authorizing the sheriff to levy upon and against all real and personal property of the Taxpayer. The writ shall be issued, served, and executed in the same manner as provided for in the issuance and service of executions rendered by the Circuit Courts of this state.
- ii. The Circuit Clerks and Sheriffs shall be entitled to receive the same fees provided by law in these matters. These fees shall be collected from the Taxpayer by either the Commission or the Sheriff in addition to the tax, penalties and interest included in the certificate of indebtedness. If the Sheriff is unable, after diligent effort, to collect the tax, interest, penalties and costs, the Commission may pay such fees as are properly shown to be due to the Clerk and Sheriff.

- (e) The Commission may contract with persons inside or outside the state to help the Commission collect delinquencies of resident or non-resident Taxpayers.

17-17-19 Injunction proceedings When a return required hereunder has not been filed or does not furnish all the information required by the Commission or when the A&P taxes imposed by law have not been paid or when any required license or permit

has not been secured, the Commission may institute any necessary action or proceeding in a court of competent jurisdiction in White County to enjoin the person or Taxpayer from continuing operations until the report or return has been filed, required licenses or permits secured, or taxes paid as required. The injunction shall be issued without a bond being required from the Commission.

17-17-20 Settlement or compromise of liability controversies

- (a) The Commission may enter into an agreement to compound, settle, or compromise any controversy relating to the A&P tax when:
 - (i) The controversy is over the amount of tax due; or
 - (ii) The inability to pay results from the insolvency of the Taxpayer.
- (b) The Commission may waive or remit the interest or penalty, or any portion thereof, ordinarily accruing because of a Taxpayer's failure to pay the A&P tax within the statutory period allowed for its payment
 - i. If the Taxpayer's failure to pay the tax is satisfactorily explained to the Commission; or
 - ii. If the failure results from a mistake by the Taxpayer of either the law or the facts subjecting him to such tax; or
 - iii. If the inability to pay the interest or penalty results from the insolvency or bankruptcy of the Taxpayer.
- (c) In settling or compromising any controversy relating to the liability of a person for the A&P tax for any taxable period, the Commission is authorized to enter into a written closing agreement concerning the liability. When the closing agreement is signed by the Commission, it shall be final and conclusive, and except upon a showing of fraud or misrepresentation of a material fact, no additional assessment or collection shall be made by the Commission, and the Taxpayer shall not institute any judicial proceeding to recover such liabilities as agreed to in the closing agreement.
- (d) The Commission shall promulgate rules and regulations establishing guidelines for determining whether a proposed offer in compromise is adequate and is acceptable to resolve a tax dispute.

17-17-21 Release of property from lien

- (a) Upon written application by any person, the Commission may release any property from the lien imposed by any assessment, order, judgment, or certificate of indebtedness obtained by or from any levy made by it if:
 - i. Either full payment is made to the Commission of the sum it considers adequate consideration for the release; or
 - ii. Adequate security deposit is made with the Commission to secure the payment of the debt evidenced by the lien.
- (b) When the Commission determines that its assessment, certificate of indebtedness, or judgment is clouding the title of property because of an error in the description of properties or similarity in names, the Commission may issue a release without the payment of any consideration.
- (c) The Commission's release shall be given under its seal and filed in the office of the Circuit Clerk in the county in which the lien is filed, or it shall be recorded in any office in which conveyances of real estate may be recorded.

17-17-22 Violations Any person subject to the A&P tax who is transacting business within the City of Searcy without a valid A&P tax permit shall be guilty of a violation which shall be punishable up to a five hundred dollar (\$500.00) fine. Each day a person transacts business within the City without a valid A&P tax permit shall constitute a separate violation.

17-17-23 Criminal Penalties. Sanctions for any Taxpayer who willfully attempts to evade or defeat the payment of the A&P tax, or who assists a Taxpayer to evade or defeat the payment, or otherwise fails to file a report, fails to pay the tax, or makes a false or fraudulent report, return, statement, claim, application or other instrument required by the Commission in connection with the A&P tax, or knowingly makes a false answer to any question from the Commission or its designated representative concerning any A&P tax, neglects to answer a subpoena to appear and answer questions about records for the A&P tax, or fails to obtain an A&P tax permit as required, or who acts, or fails to act, in conformance with the provisions of this chapter shall be guilty of an A Class misdemeanor and upon conviction shall be fined not more than One Thousand Dollars (\$1,000.00) and/or incarcerated in the county jail for not longer than one (1) year. Each day that a violation continues to exist shall constitute a separate offense.”

Section 2. All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

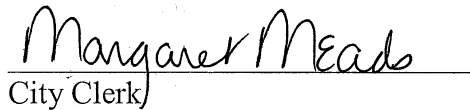
Section 3. Severability. The provisions of this ordinance are separable and, upon any finding that any provision of this ordinance is unenforceable, the remaining provisions shall be enforceable according to their terms.

Section 4. Emergency Clause. The City Council has determined that an emergency exists and that the immediate adoption and enforcement of this ordinance being necessary for the public peace, health, safety and welfare, the provision hereof shall be in full force and effect from and after its passage.

PASSED AND ADOPTED this 15th day of June, 2009.


Mayor

ATTEST:


City Clerk

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