

ORDINANCE NO. 2060

AN ORDINANCE OF THE CITY OF EUREKA SPRINGS, ARKANSAS, ADOPTING ARK CODE ANNODATED 26-75-601 ET SEQ AS THE ENABLING LEGISLATION UNDER WHICH THE CITY COLLECTS AND ADMINISTERS ITS ADVERTISING AND PROMOTION TAX AND COMMISSION, AND SETTING THE TAX RATE

WHEREAS, state code offers two sections under which cities may organize advertising and promotion commissions and collect a sales and use tax to fund the commission

WHEREAS, the City Council of the City of Eureka Springs has determined that its business community would be better served by the City Advertising and Promotion Commission operating under ACA 26-75-601 et seq.,

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS:

1. That beginning on the effective date of this ordinance, the City Advertising and Promotion Commission of the City of Eureka Springs shall operate and collect tax according to ACA 26-75-601 et seq.

2. That Section 2.52.01 of the Eureka Springs Municipal Code shall be replaced in its entirety with the following:

2.52.01 Created. The City Advertising and Promotion Commission is created. The Commission shall be composed of seven (7) members, as follows: four (4) members shall be owners or managers of businesses in the tourism industry, and the owner or manager shall reside within the municipality. At least three (3) of these members shall be owners or managers of hotels, motels, or restaurants and shall serve for staggered terms of four (4) years; two (2) members of the Commission shall be members of the governing body of the municipality and selected by the governing body and shall serve at the will of the governing body; and one (1) member shall be a qualified elector appointed by the Mayor from the public at large who shall reside within the municipality and shall serve for a term of four (4) years.

Members of the A&P commission serving at the time this ordinance takes effect shall continue in office for the balance of the terms to which they have been previously appointed.

Whether resulting from expiration of a regular term or otherwise, a vacancy on the commission in any of the four (4) tourism industry positions or in the at-large position shall be filled by appointment made by the remaining members of the commission, with the approval of the governing body of the city.

3. That the definition of “Gift and souvenir shop” under Sec. 3.20.01 of municipal code is deleted.

4. That the definition of “Gross Receipts Tax” under Sec. 3.20.01 is amended to read “means a tax of three (3) percent (%)”, and that this definition ends after the word “cafeterias” with all following verbiage in the definition deleted.

5. That the definition of hotel or motel accommodations under Sec. 3.20.01 is replaced with: Hotel or motel accommodations means any sleeping accommodation rented or leased for a period of less than 30 days, including, but not limited to, hotels, motels, bed & breakfast inns, tourist lodgings, condominiums, and camping or RV sites.

6. That Sec. 3.20.02 of Municipal code is replaced with the following:

3.20.02 Gross Receipts Tax Levied

A tax in the sum of three (3) percent (%) is levied on the gross receipts or gross proceeds from renting, leasing, or otherwise furnishing hotel, motel, or short-term condominium rental accommodations for sleeping as defined in Sec. 3.20.01, but such accommodations shall not include the rental or lease of such accommodations for periods of thirty (30) days or more; and a tax in the sum of three (3) percent (%) is levied on the portion of the gross receipts or gross proceeds received by restaurants, cafes, and cafeterias, as defined in Sec. 3.20.01, but such tax shall not apply to such gross receipts or gross proceeds of organizations qualified under section 501(c)(3) of the federal Internal Revenue Code.

Taxable business: The Advertising and Promotion Commission shall prepare and maintain a current list of the business establishments in the city subject to the gross receipts tax.

Collection of tax: The tax levied in this section shall be paid by the persons, firms, and corporations liable therefore and shall be collected by the advertising and promotion commission of the levying city or by a designated agent of the commission in the same manner and at the same time as the tax levied by the Arkansas Gross Receipts Act of 1941, § [26-52-101](#) et seq. The person paying the tax shall report and remit it upon forms provided by the commission, and as directed by the commission. The rules, regulations, forms of notice, assessment procedures, and the enforcement and collection of the tax under the Arkansas Gross Receipts Act of 1941, § [26-52-101](#) et seq. and the Arkansas Tax Procedure Act, § [26-18-101](#), et seq., shall, so far as practicable, be applicable with respect to the tax levied pursuant to the authority of this subchapter. However, the administration and enforcement, and all actions, shall be by and in the name of the city through the proper officials of the city and pursuant to Chapter 2.56 of the municipal code

7. That all ordinances or resolutions, and parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

8. That each of the provisions of this ordinance are severable and the decision of any court having jurisdiction as to the validity of any provision shall not effect the remaining provisions.

EMERGENCY CLAUSE

Whereas time is of the essence due to the pending repeal of the current commission and tax levy, and in order to protect the health, safety, and welfare of the people of the City of Eureka Springs, AR, an emergency is here by declared to exist and this ordinance shall become effective upon its passage by the City Council of Eureka Springs and upon the affixing of the signature of the City Clerk and the Mayor of the City of Eureka Springs, AR

PASSED AND APPROVED JULY 23, 2007.

Approved:

Mayor Dani D. Wilson

Attest:

City Clerk Mary Jean Sell

26-75-603. Collection of tax.

(a) From the effective date of the levying ordinance, the tax so levied shall be paid by the persons, firms, and corporations liable therefor and shall be collected by the advertising and promotion commission of the levying city or by a designated agent of the commission in the same manner and at the same time as the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(b) (1) The person paying the tax shall report and remit it upon forms provided by the commission and as directed by the commission. The rules, regulations, forms of notice, assessment procedures, and the enforcement and collection of the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq. and the Arkansas Tax Procedure Act, § 26-18-101 et seq., so far as practicable shall be applicable with respect to the enforcement and collection of the tax levied pursuant to the authority of this subchapter.

(2) However, the administration and enforcement and all actions shall be by and in the name of the commission through the proper commission officials or agents. The commission shall have the authority to sue and be sued in its name.

(3) The Department of Finance and Administration shall have no authority to enforce or collect the tax levied pursuant to this subchapter.

(c) The levying city is authorized to adopt ordinances consistent with and in similar form to the Arkansas Tax Procedure Act, § 26-18-101 et seq., to enable the commission or its agent to enforce the tax through examination of records, notices of proposed and final assessment, and administrative hearings on proposed assessments. The levying city is also authorized to adopt ordinances which enable the commission to:

(1) Assess penalties and interest against taxpayers who fail to timely report or pay the tax. The penalty is equal to five percent (5%) of the unpaid tax amount per month not to exceed a total assessment of thirty-five percent (35%) of the unpaid tax. Simple interest on unpaid taxes shall be assessed at the rate of ten percent (10%) per annum;

(2) Assess unpaid or unreported tax within three (3) years of the date the tax is due;

(3) Provide for judicial relief from proposed assessments in accordance with subsection (d) of this section; and

(4) Issue certificates of indebtedness in accordance with subdivision (c)(3) of this section.

(d) (1) Within thirty (30) days of the issuance of the notice and demand for payment of a deficiency in tax established by a final determination of the hearing officer, a taxpayer may seek judicial relief from the final determination by either:

(A) Paying under protest the amount of the deficiency, plus penalty and interest determined by the commission to be due, and filing a suit to recover that amount within one (1) year from the date of payment under protest; or

(B) (i) 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.

(ii) 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 costs assessed against the taxpayer.

(iii) A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by this subsection, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs.

(2) The method provided in this section is the exclusive method for seeking relief from a written decision of the commission establishing a deficiency in tax. No injunction shall issue to stay proceedings for assessment or collection of this tax.

(e) (1) If a taxpayer does not timely and properly pursue the taxpayer's remedies seeking relief from a decision of the commission 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 as soon as practicable thereafter shall issue to the circuit clerk of the county where 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(f) The provisions of subsections (d) and (e) of this section shall be effective only when the levying city adopts an ordinance which specifically provides that these provisions shall be utilized by the commission in enforcing the tax.

HISTORY: Acts 1965, No. 185, § 3; 1965 (1st Ex. Sess.), No. 30, § 1; A.S.A. 1947, § 19-4614; Acts 1993, No. 364, § 2; 1997, No. 1016, § 1.

26-75-602. Gross receipts taxes authorized.

(a) Any city of the first class, city of the second class, or incorporated town by ordinance of the governing body thereof may levy a tax not to exceed three percent (3%) upon the gross receipts or gross proceeds identified in subsection (c) of this section.

(b) Any city of the first class in which is located a city park of one thousand (1,000) acres or more in a like manner may levy an additional tax of one percent (1%) upon the gross receipts or gross proceeds identified in subsection (c) of this section. Revenues collected from this additional tax shall be used by the city parks and recreation department for the promotion and development of city parks and recreation areas.

(c) The tax authorized in this subchapter shall be upon any one (1) or more of the following, as specified in the levying ordinance:

(1) The gross receipts or gross proceeds from renting, leasing, or otherwise furnishing hotel, motel, house, cabin, bed and breakfast, campground, condominium, or other similar rental accommodations for sleeping, meeting, or party room facilities for profit in such city or town, but such accommodations shall not include the rental or lease of such accommodations for periods of thirty (30) days or more; and

(2) The portion of the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, or similar businesses as shall be defined in the levying ordinance from the sale of prepared food and beverages for on-premises or off-premises consumption, but such tax shall not apply to such gross receipts or gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3).