

CITY OF OZARK, ARKANSAS

ORDINANCE NO. 2004- 10

AN ORDINANCE AMENDING ORDINANCE NO. 1991-5 TO PROVIDE CRIMINAL PENALTIES FOR FAILURE TO REMIT HOTEL AND RESTAURANT TAXES, PROVIDING FOR THE COLLECTION OF SAID TAXES PURSUANT TO STATE LAW AND DECLARING AN EMERGENCY.

WHEREAS, Arkansas Code Annotated Section 26-75-603 provides for the enforcement of the hotel and restaurant tax as authorized by this Chapter; and

WHEREAS, it is in the best interests of the City of Ozark that the City's Advertising and Promotion Commission have full use of enforcement procedures which are authorized by state law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OZARK, ARKANSAS:

SECTION 1: That the Ozark Ordinance No. 1991-5 be amended to include the following provisions:

A. ENFORCEMENT AND COLLECTION:

1. Any person required under this Section to pay the hotel and restaurant tax or file reports of said tax who willfully fails to pay said tax or file a report shall be guilty of a misdemeanor.
2. In addition to all other powers granted to the Commission pursuant to state law, the Commission shall have full enforcement and collection powers as set forth in Ark. Code Annotated § 26-75-603 and § 26-18-101 *et seq.*, as well as the power to:
 - a. Assess penalties and interest against taxpayers who fail to timely report or pay the tax. The penalty shall be equal to five percent (5%) of the unpaid tax amount per month not to exceed a total assessment of thirty-five (35%) of the unpaid tax. Simple interest on unpaid taxes shall be assessed at the rate of ten percent (10%) per annum;
 - b. Assess unpaid or unreported tax within three (3) years of the date the tax is due;
 - c. Provide for judicial relief from proposed assessments in accordance with this section;
 - d. Issue certificates of indebtedness in accordance with Section E.

B. EXAMINATION OF RECORDS

1. In the administration of the hotel and restaurant tax authorized by this Chapter, the Commission, for the purpose of determining the accuracy of a report of fixing any

liability under such tax provisions, 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 these pieces and items and facilitate any examination or investigation.

C. NOTICE

1. The Commission shall give the taxpayer notice of any assessment, demand, decision, or hearing before the Commission which directly involves that taxpayer.
2. All notice 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 have been served and given, and the Commission may take any action permitted by this Section and by Ark. Code Ann. § 26-75-603.
3. If any taxpayer fails to file a report and remit the hotel and restaurant tax as provided for by this Section, the Commission, from any information in its possession or obtainable by it, may determine the correct amount of tax due in accordance with the following procedure:

The Commission shall propose the assessment of tax due 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 shall be made if the taxpayer does not protest such proposed assessment.

D. ADMINISTRATIVE PROCEDURE

1. Any taxpayer who wishes to seek administrative relief from any proposed assessment of taxes shall do so pursuant to the following procedures:
 - a. 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.
 - b. 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. If the taxpayer requests a hearing, the Commission shall set the time and place for hearing and shall give the taxpayer reasonable notice thereof.

d. Within thirty (30) days of the issuance and service on the taxpayer of the notice and demand for payment of a deficiency in tax established by (a) a proposed assessment which is not protested by the taxpayer under this Chapter, or (b) a final determination of the Commission following administrative review, the taxpayer may seek judicial relief from the final determination in accordance with Ark. Code Ann. § 26-75-603 (d).

E. CERTIFICATE OF INDEBTEDNESS/JUDGMENT

1. If a taxpayer does not timely and properly pursue his 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 shall, as soon as practicable thereafter, utilize the provisions of Ark. Code Ann. § 26-75-603 (e) to enforce payment by issuing to the Circuit Clerk 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 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.

SECTION 2. This ordinance is necessary for the immediate health, safety and welfare and peace of the citizens of Ozark, Arkansas.

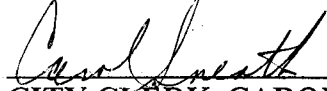
PASSED AND APPROVED THIS 8th **DAY OF** November, 2004.

APPROVED:



MAYOR, C.L. "BAT" COLEY

ATTEST:



CITY CLERK, CAROL SNEATH