

92-0-28
ORDINANCE
COUNTY OF COOK, ILLINOIS
HOME RULE COUNTY USE TAX ORDINANCE

WHEREAS, County of Cook is a home rule unit of local government pursuant to Article VII, Section 6(a) of the 1970 Illinois Constitution, and

WHEREAS, as a home rule county, County of Cook is authorized by P.A. 86-962, as amended, to impose and collect a tax upon the use of tangible personal property which is purchased at retail and which is titled or registered by an agency of state government to a person at a location within Cook County, and

WHEREAS, the Board of Cook County Commissioners finds that such alternative and new sources of revenue are required to fund the operations of Cook County Government.

NOW THEREFORE BE IT ORDAINED AS FOLLOWS:

SECTION 1. TITLE

This ordinance shall be known and may be cited as the "Cook County Home Rule County Use Tax Ordinance". The tax herein imposed is in addition to all other taxes imposed by the County of Cook, the state of Illinois or any municipal corporation or political subdivision thereof.

SECTION 2. DEFINITIONS

For purposes of this ordinance, when any of the following words or terms are used herein they shall have the meaning or construction ascribed to them in this section:

"County" means the County of Cook, a body politic and corporate of Illinois.

"Bureau" means the Cook County Bureau of Finance.

"Department" means the Department of Revenue within the Cook County Bureau of Finance.

"Director" means the Director of the Department of Revenue, or his duly authorized representative.

"Person" means any natural individual, foundation, institution, partnership, association, public or private corporation, or a receiver, executor, trustee, conservator or other representative appointed by order of any court.

"Purchaser" means any person who, through a sale at retail, acquires the ownership of or title to tangible personal property which is titled or registered with an agency of the state, for a valuable consideration.

"Purchaser at retail" means the acquisition of the ownership of or title to tangible personal property which is titled or registered with an agency of the state, through a sales at retail.

"Retailer" means every person engaged in the business of making sales at retail of tangible personal property which is titled or registered with an agency of the state. A person who does not hold himself out as being engaged in the business of selling tangible personal property at retail and who makes only isolated or occasional sales of tangible personal property titled or registered with an agency of the state is not a "retailer" within the meaning of this ordinance. A person who is engaged in the business of leasing or renting motor vehicles to others and who in connection with such business sells any used motor vehicle to a purchaser for such purchaser's use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail under this ordinance to the extent of the value of the vehicle sold. For the purpose of this section, "motor vehicle" shall have the meaning provided by Section 157 of the Illinois Vehicle Code, as amended.

"Retailer maintaining a place of business in the County" or any like term, shall mean and include any retailer:

(1.) Having or maintaining within the County, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business or any agent or other representative operating within the County under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located in the County permanently or temporarily; or

(2.) Engaging in soliciting orders within the County from persons by means of catalogues, advertising or other types of solicitation, whether such orders are received or accepted within or outside the County; or

(3.) Making or effectuating sales for delivery into the County; or

(4.) Owning or possessing real or personal property located or used in the County for the purpose of or incidental to the making of sales at retail as herein defined.

"Sale at retail" means any transfer for valuable consideration of the ownership of or title to tangible personal property which is to be titled or registered to a person at a location in Cook County with an agency of the state, for use in Cook County, where such transfer is not for the purpose of resale in any form as tangible personal property. Transactions whereby the possession of property is transferred but the seller retains title as security for payment of the selling price with transfer of title effected upon full payment of the selling price shall be deemed to be "sales at retail". "Sales at retail" shall be construed to include any transfer of the ownership of or title to tangible personal property which is titled or registered with an agency of the state, to a purchaser for use by any other person, to whom such purchaser may transfer, whether made for or without valuable consideration, for resale in any form as tangible personal property as herein defined, unless made in compliance with Section 7 of this ordinance. "Sale at retail" includes any transfer of, ownership of or title to tangible personal property as herein defined, for use in Cook County incidental to a sale of service.

"State" means the state of Illinois.

"Tangible personal property" means tangible personal property which is titled or registered with an agency of the state to a person at a location within the corporate limits of Cook County.

"Tax" or "use tax" means the tax imposed by this ordinance, unless the context requires construction otherwise.

"Tax collector" means a retailer maintaining a place of business within the County.

"Use" means the exercise by any person of any right to or power over tangible personal property incident to the ownership of that property. "Use" does not mean the interim holding of tangible personal property by a retailer before he sells such tangible personal property nor the incidental use of such property in the regular course of such business for sales demonstration purposes.

SECTION 3. TAX IMPOSED

Except as provided in Section 4, every user of tangible personal property which is purchased at retail on or after December 1, 1995 from a retailer and which is titled or, registered at a location within the corporate limits of Cook County with an agency of the state government, shall be liable for a tax on the privilege of using such property in the County at the rate of 3/4% percent of such property's selling price (as the term "selling price" is defined by Section 2 of the USE TAX ACT (Ill.Rev.Stat.ch.120,par.439.2 as amended)).

The tax imposed by this ordinance and the obligation to pay the same is upon the user. The tax imposed by this ordinance shall be collected from the purchaser by the tax collector as defined by Section 2 of this ordinance, and remitted to the Department as provided herein. The tax collector shall be liable to the County for the amount of tax that it is required to collect. Retailers shall collect the tax from the users by adding the tax to the selling price of tangible personal property when sold for use in the County, in the manner prescribed by this ordinance and the Department. The tax imposed by this ordinance shall, when collected, be stated as a distinct item separate and apart from the selling price of tangible personal property. The tax hereby imposed and not paid to a retailer pursuant to this section shall be paid to the Department directly by any person using such property within the County pursuant to Section 8 of this ordinance. If any retailer, in collecting the amount which purports to constitute use taxes measured by receipts from sales which are

subject to tax under this ordinance, collects more from the purchaser than the actual use tax liability on the transaction, the purchaser shall have a legal right to claim a refund of such amount from such retailer. However, if such amount is not refunded to the purchaser for any reason, the retailer is liable to pay such amount to the Department.

Every retailer maintaining a place of business in the County and making sales of tangible personal property for use in the County, shall when collecting the tax as provided in Section 3 from the purchaser, give to the purchaser a receipt for such tax in the manner and form prescribed by the Department. Such receipt shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer.

SECTION 4. TRANSACTIONS NOT SUBJECT TO TAX

Notwithstanding any other provisions of this ordinance, uses of tangible personal property, as defined in Section 2 of this ordinance, which are exempt under the applicable provisions of Section 5-1008 of the Illinois Counties Code (Ill. Rev. Stat. ch. 34, par. 5-1008), as amended, and the Illinois Use Tax Act, as amended, (Ill.Rev.Stat.ch.120, par.439) shall not be subject to the tax imposed by this ordinance.

SECTION 5. RETAILER REGISTRATION - SECURITY

Every retailer maintaining a place of business in the County, shall apply for registration as a tax collector with the Department no later than 30 days after commencing such business or 30 days after the effective date of this ordinance, whichever occurs later. Application for registration shall be made to the Department by use of the form furnished by the Department for such purpose and shall contain such information as the Department may reasonable require.

The Department may require an applicant for registration to furnish, within 30 days after commencing to engage in the business of selling tangible personal property at retail, a bond from a surety company authorized to do business in Illinois, or a bond secured by an assignment of a bank account or certificate of deposit, conditioned upon the applicant paying to the County all moneys becoming due under this ordinance. The Department shall fix the amount of any such security in each case, taking into consideration the amount of money expected to become due from the applicant under this ordinance. The amount of any security required by the Department shall be such as, in the Department's opinion, will protect the County against failure to pay the amount which may become due from the applicant under this ordinance. The amount of any security required by the Department shall not exceed three times the amount of the applicant's average monthly tax collection and remittance liability or \$50,000.00, whichever amount is lower. A retailer that fails to furnish security required by the Department in accordance with this section shall not be permitted to register as a tax collector.

A tax collector which has, as verified by the Department, faithfully and continuously complied with the conditions of its bond or other security under the provisions of this ordinance for a period of three consecutive years, shall be entitled to a release of the bond or other security and shall be exempt from all requirements of furnishing a bond other security as a condition precedent to registration under this ordinance. Such exemption shall continue until such time as the Department shall determine that the tax collector is delinquent in the filing of any return or is delinquent or deficient in the paying of any tax under this ordinance.

With respect to security other than bonds (upon which the Department may sue in the event of a forfeiture), if a tax collector fails to pay, when due, any amount whose payment such security guarantees, the Department shall, after such liability is admitted by the tax collector or established by the Department through issuance of a final assessment that has become final under the law, convert or cause to be converted the security which the tax collector has furnished, into money for the County after first giving the tax collector 10 days written notice by registered or certified mail, to pay the liability or forfeit such security to the Department. If the security consists of a bank certificate of deposit, the Department shall convert the security into money by demanding and collecting the amount of such bank certificate of deposit from the bank which issued the certificate. If the Department realizes more than the amount of such liability from the security, plus the expenses incurred by the Department in converting the security into money, the Department shall pay such excess to the tax collector who furnished such security, and the balances thereby received on behalf of the County shall be paid into the corporate fund of the County.

A retailer maintaining a place of business in Cook County who fails to register as herein required shall be guilty of violating this ordinance and shall be fined \$1,000 for each offense. Each sale at retail conducted by an unregistered retailer shall constitute a separate offense.

SECTION 6. FILING OF RETURNS

Except as provided in this section, every retailer required to collect the tax imposed by this ordinance shall, on or before the 5th day of each calendar month, file a return for the preceding calendar month with the Department. Except as otherwise herein provided, taxes reported as collected and payable to the County shall be remitted to the County at the time a return is filed. Such returns shall be in a form determined by the Department and should state such reasonable information as the Department may require. Where the same person has more than one business registered with the Department under separate registrations under this ordinance, such person shall be required to file separate returns for each such registered business.

Notwithstanding any other provision of this ordinance concerning the time within which a retailer may file his return, in the case of a retailer who ceases to engage in a kind of business which makes him responsible for filing returns under this ordinance, such retailer shall file a final return under this ordinance with the Department not later than one calendar month after making the last sale at retail. All taxes due to be paid to the County shall be remitted to the County at the time the final return is filed with the Department.

Except as provided in this section, the retailer filing the return shall pay the Department the amount of tax imposed by this ordinance, less a discount of two percent of the tax collected, which is allowed to reimburse the seller for the expenses incurred in collecting the tax, keeping records, preparing and filing returns, remitting the tax and supplying data to the Department. However, the discount herein provided shall not be allowed for any taxes not paid when due. All such discounts shall be credited against the tax collector's liabilities under this ordinance. Refunds to purchasers made by the retailer during any return period shall be allowed as a credit on the next period return filed, but only if the retailer included the receipts from such sale in a return filed and remitted the tax imposed by this ordinance with respect to such receipts.

The Director may require any tax collector to prepare and file an annual information return on the form prescribed by the Department, within 15 days after the tax collector files its annual income tax return with the state for such fiscal year. Such annual return to the Department shall include a statement of receipts as shown on the retailer's state income tax return. If the total receipts of the business as reported in the state income tax return do not agree with the receipts reported to the Department for the same period, the retailer shall attach to its annual return a schedule showing a reconciliation of the two amounts and state reasons for the differences. The retailer's annual return to the Department shall also disclose such additional reasonable information as the Department shall require to enable the Department to determine the accuracy of any periodic return filed by such retailer as provided by this section.

Where the tax collector is a corporation, all returns filed on behalf of such corporation shall be signed by the president, vice president, secretary or treasurer or by the properly accredited agent of such corporation, the chief executive officer or the highest ranking manager of such corporation. All returns required to be filed by this section shall be signed by, and the accuracy of the return certified by the president, vice president, secretary, treasurer, chief executive officer, owner or the highest ranking manager of the tax collector. Failure to file a return as herein required shall be a violation of this ordinance and shall subject the tax collector to a fine of \$1,000 for each violation. Any person who files a return with false or misleading information or signs or certifies such return, shall be guilty of violating this ordinance and shall be subject to a fine of \$1,000 for each such violation. The return form prescribed by the Department shall include a statement that any person signing such return may be subject to the penalties herein provided.

Any retailer filing a return under this section shall also report for the purpose of paying the taxes due thereon, the total tax, if any, imposed upon it for the use of tangible personal property purchased by it for its own use, where such tax was not otherwise collected by the selling retailer. Such filing retailer shall remit the tax to the Department when filing such return.

SECTION 7. RESELLERS OF TANGIBLE PERSONAL PROPERTY

If a purchaser is not registered with the Department as a tax collector, but claims to be a reseller of tangible personal property in such a way that the purchaser's use is not taxable under this ordinance, such purchaser shall apply to the Department for a County resale number. Such applicant shall state facts which demonstrate to the Department why the applicant is not liable for tax under this ordinance and shall furnish such additional information as the Department may reasonably require.

Upon approval of the application, the Department shall assign a resale number to the applicant and shall certify such number to him. The Department may cancel any such number which is obtained through misrepresentation, or which is used to make a use tax-free purchase when the purchaser in fact is not a purchaser for resale, or where the purchaser has discontinued making resales of property. Except as provided in this section, no use shall be made tax-free on grounds of the retailer's sale being a sale for resale unless the purchaser has an active County registration number or County resale number from the Department, and furnishes that number to the retailer in connection with certifying to the retailer that any use by such purchaser is non-taxable because of the retailer's sale being a sale for resale.

SECTION 8. PURCHASER PAYING TAX DIRECTLY TO DEPARTMENT

When tangible personal property is purchased from a retailer for use in the County by a purchaser or user subject to the tax imposed by this ordinance, and who did not pay the tax imposed by this ordinance to the retailer, and who did not file returns with the Department as a retailer under Section 6 of this ordinance, such purchaser or user shall, by the last day of the calendar month in which such purchase was made, file return with the Department and pay the tax due under this ordinance.

When tangible personal property is purchased by a lessor, which is subject to a lease for one year or longer, executed or in effect at the time of purchase, to an interstate carrier for hire, where such lessor did not pay the tax imposed by this ordinance to the retailer at the time of purchase, such lessor shall, by the last day of the calendar month in which such property reverts to the use of such lessor, file a return with the Department and pay the tax imposed by this ordinance upon the fair market value of such property on the date of reversion.

When a purchaser or user pays the tax imposed by this ordinance directly to the Department, the Department shall issue an appropriate receipt to such purchaser or user showing that the tax has been paid to the Department. Such receipt shall be sufficient to relieve the purchaser or user from further liability for the tax to which said receipt may refer.

A purchaser or user who is liable to pay use tax directly to the Department only occasionally and not on a frequent recurring basis, and who is not required to file returns with the Department as a retailer under Section 6 of this ordinance, concerning the filing of regular monthly tax returns and all provisions concerning the requirements of registrants to post bond or other security with the Department shall apply to such purchasers or users; except that such a purchaser or user shall not be entitled to the two percent discount provided in Section 6 on any remittance, when such purchaser or user could have paid the tax to the retail seller of the property who was a registered tax collector for the County, instead of remitting the use tax directly to the Department.

SECTION 9. INTEREST AND PENALTIES

In case any person engaged in the business of selling tangible personal property at retail subject to or required to collect the tax imposed by this ordinance, fails to file a return, the Department shall determine the amount of tax due from such person according to the Department's best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination. Proof of such determination by the Department may be made at any hearing before the Department or in any legal proceeding, by a reproduced copy of the Department's record relating thereto, in the name of the Department under the certificate of the Director. Such reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due as shown therein.

In case of failure to pay the tax or any portion thereof, or any penalty or interest when due, the Department may request that suit be brought against the tax collector or return filer, or the purchaser or user to recover the amount of such tax or portion thereof, or penalty or interest, or if the tax collector or purchaser or user has died or has become incompetent, may file a claim therefore against his estate. The collection of tax, penalty or interest by any means provided for herein shall not be a bar to collection by any other means.

Any tax amount which is not paid or remitted when due, shall bear interest at the rate provided in the Cook County Uniform Penalty, Interest and Procedures Ordinance.

SECTION 10. COUNTY CLERK AS AGENT

Any nonresident of the County who acts as a retailer maintaining a place of business within the County within the meaning of Section 2 of this ordinance, and any resident of the County who incurs liability under this ordinance and who subsequently removes from the County or conceals his whereabouts, and any person who incurs tax liability under this ordinance as a purchaser or user in the County and who removes from the County or conceals his whereabouts, shall be deemed thereby to appoint the County Clerk his agent for the service of notice in any administrative proceeding under this ordinance. Such notice shall be served by the Bureau on the County Clerk at least 15 days before the date of such proceeding. A true copy of the notice along with the endorsement of service upon the County Clerk, shall be sent on the same day to the tax payer or tax collector, by United States registered or certified mail, first class, postage prepaid, addressed to the tax collector or tax payer at the last known address.

Service of notice in the manner herein provided shall have the same force and effect as if served upon the tax payer or tax collector personally, and shall confer jurisdiction upon the Bureau to conduct an administrative hearing on the liability of the tax collector or tax payer.

SECTION 11. DUTY OF DEPARTMENT TO COLLECT TAX

It shall be the duty of the Department to collect and receive the tax imposed by this ordinance. The Department shall keep an accurate and separate account of all such tax payments received by it showing the name and address of the person remitting the tax and the date of each payment. The Director is hereby empowered to adopt, promulgate and enforce, rules and regulations not inconsistent with this ordinance, relating to the administration and enforcement of the provisions of this ordinance, including provisions for examination, re-examination, correction and amendment of all returns filed or required to be filed pursuant to this ordinance or the conduct of administrative hearings to aid in establishing liability for payment of taxes due under this ordinance. The Director or any person designated by him including but not limited to the Cook County Auditor, is hereby authorized to examine the books, papers and records of any tax collector during regular business hours, in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax imposed by this ordinance.

SECTION 12. BOOKS AND RECORDS TO BE KEPT

It shall be the duty of all retailers, tax collectors and persons required by this ordinance to collect and/or to pay the taxes herein imposed to keep and maintain all books, papers and records related to all transactions taxable under this ordinance and to make such records available to the Director on request for inspection, audit and/or copying during regular business hours. Books, papers and records which relate to a return filed or required to be filed with the Department shall be kept for a period of not less than three years after the date such return was filed was due to be filed. The burden shall be on the tax collector and tax payer to keep records which verify the basis for any and all transactions which are claimed to be exempt from taxation pursuant to Section 4 of this ordinance or for which the tax collector was otherwise excused from collecting the tax.

To aid in the enforcement of this ordinance, the Director is hereby authorized and directed to obtain such records of the Illinois Secretary of State of tangible personal property, including automobiles and other vehicles, which from time to time are registered or titled by the Secretary of State to a person located in Cook County. The Director is further authorized to enter into tax information sharing agreements with other home rule jurisdictions imposing home rule use taxes.

SECTION 13. PAYMENTS MADE BY U.S. MAIL

All payments required to be made and all returns required or authorized to be filed by this ordinance, if transmitted through the United States mail, shall be deemed paid or filed on the date shown by the post office cancellation mark stamped on the envelope or other wrapping containing it, provided, however, that if such payments or returns are received without a cancellation mark or with the cancellation mark illegible or erroneous, such payments or returns shall be deemed to be paid or filed on the date actually received by the Bureau, unless the sender establishes by competent evidence that such payment or return was deposited, properly addressed, in the United States mail on or before the date on which it was due or required or authorized to be filed.

SECTION 14. SEVERABILITY

If any provision of this ordinance or application thereof to any person or circumstances is held unconstitutional or otherwise invalid, such invalidity shall not affect any other provision or application of this ordinance which can be given effect without the invalid application of this ordinance, such provision is severable, unless otherwise provided by this ordinance. In particular, but without limitation, each provision creating an exception to or an exemption or exclusion from the imposition of the tax is severable.

SECTION 15. EFFECTIVE DATE

This ordinance shall be effective upon its passage.

Approved and adopted this 4th day of May, 1992.

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