

AUG 06 1991 *[Signature]*

ORDINANCE NO. 91-17

Approved: 1
8/06/91 2

Effective: 3
8/21/91 4

AN ORDINANCE PERTAINING TO TAXATION IN ORANGE COUNTY, FLORIDA; LEVYING WITHIN THE UNINCORPORATED AREA OF ORANGE COUNTY A PUBLIC SERVICE TAX ON THE PURCHASE OF ELECTRICITY, METERED OR BOTTLED GAS (NATURAL LIQUEFIED PETROLEUM GAS OR MANUFACTURED), WATER SERVICE, FUEL OIL, AND TELECOMMUNICATION SERVICES; PROVIDING THAT THE RATE OF SUCH TAX ON ELECTRICITY, METERED OR BOTTLED GAS, AND WATER SERVICE SHALL BE 10% OF THE PAYMENTS RECEIVED BY THE SELLER OF THE TAXABLE ITEM OR SERVICE FROM THE PURCHASER FOR THE PURCHASE; PROVIDING THAT THE TAX ON FUEL OIL SHALL BE AT A RATE OF FOUR CENTS PER GALLON; PROVIDING THAT FOR TELECOMMUNICATION SERVICE, THE TAX SHALL BE IMPOSED ACCORDING TO SECTION 166.231(9)(a)2, FLORIDA STATUTES; PROVIDING FOR EXEMPTIONS FROM PAYMENT OF THE TAX; PROVIDING THAT THE TAX SHALL BE PAID BY THE PURCHASER TO THE SELLER FOR THE BENEFIT OF THE COUNTY; PROVIDING FOR THE MANNER OF COLLECTION AND REMITTANCE TO THE COUNTY BY THE SELLER; PROVIDING FOR THE KEEPING OF RECORDS BY THE SELLER AND FOR THE INSPECTION OF SUCH RECORDS BY THE COUNTY; PROVIDING THAT THE TAX MAY BE COMPUTED ON THE AGGREGATE AMOUNT OF SALES; PROVIDING FOR USE OF PROCEEDS; PROVIDING PENALTIES FOR LATE PAYMENTS AND OTHER VIOLATIONS OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, §1(g), and Article VII, §9(a), of the Constitution of the State of Florida, and the Orange County Charter, the County is authorized to impose a public service tax pursuant to Section 166.231, Florida Statutes (1989), as amended by Chapter 90-360, Laws of Florida. NOW THEREFORE,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

SECTION 1. TITLE. This ordinance shall be known as the "Orange County Public Service Tax Ordinance."

SECTION 2. IMPOSITION OF TAX.

(a) Except as exempted by Section 4, there is hereby levied by the County within the unincorporated area of Orange County a public service tax upon each purchase of electricity, metered or bottled gas (natural liquefied petroleum gas or manufactured), and water service at a rate of ten percent (10%) of the payments received by the seller of the taxable item or service from the purchaser for the purchase of such item or service.

1 (b) Except as exempted by Section 4, there is hereby
2 levied by the County within the unincorporated area of Orange
3 County, a public service tax upon each purchase of fuel oil
4 at a rate of four cents per gallon.

5 (c) Except as exempted by Section 4, there is hereby
6 levied by the County a public service tax upon each purchase
7 of telecommunication services, as defined in Section 203.012,
8 Florida Statutes, as it may from time to time be amended,
9 which originate and terminate in this state, at a rate of
10 seven percent (7%) of the total amount charged for any
11 telecommunications service provided within the unincorporated
12 area of Orange County or, if the location of the
13 telecommunications service provided cannot be determined, the
14 total amount billed for such telecommunications service to a
15 telephone or telephone number, a telecommunications number or
16 device, or a customers' billing address located within the
17 unincorporated area of the County, excluding public telephone
18 charges collected on site, charges for any foreign exchange
19 service or any private line service except when such services
20 are used or sold as a substitute for any telephone company
21 switched service or dedicated facility by which a telephone
22 company provides a communication path, access charges, and
23 any customer access line charges paid to a local telephone
24 company. Telecommunications service as defined in Section
25 203.012(5)(b), Florida Statutes, shall be taxed only on the
26 monthly recurring customer service charges excluding variable
27 usage charges.

28 (d) The tax shall not be applied against any fuel
29 adjustment charge, and such charge shall be stated separately
30 on each bill. The term "fuel adjustment charge" means all
31 increases in the cost of utility services to the ultimate
32 consumer resulting from an increase in cost of fuel to the
33 utility subsequent to October 1, 1973.

1 (e) Subject to the provisions of Section 4, the tax
2 shall in every case be paid by the purchaser of the taxable
3 item to the seller of the taxable item at the time of paying
4 the charge therefor.

5 SECTION 3. DATE OF APPLICATION. The tax levied hereby
6 shall apply to all purchases of taxable items or services
7 occurring on and after October 1, 1991.

8 SECTION 4. EXEMPTIONS AND EXCLUSIONS FROM PAYMENT OF TAX.

9 The following purchasers are declared to be exempt from
10 payment of the tax imposed hereby: The United States
11 Government, the State of Florida, Orange County, and any
12 other public body as defined in Section 1.01, Florida
13 Statutes; the purchase of any taxable item by any recognized
14 church within the State of Florida for use exclusively for
15 church purposes; the purchase of natural gas or fuel oil by a
16 public or private utility, either for resale or for use as
17 fuel in the generation of electricity, or the purchase of
18 fuel oil or kerosene for use as an aircraft engine fuel or
19 propellant or for use in internal combustion engines; and for
20 the purchase of local telephone service or other
21 telecommunications service for use in the conduct of a
22 telecommunications service for hire or otherwise for resale.

23 SECTION 5. COLLECTION AND REMITTANCE. It shall be the
24 duty of every seller of electricity, metered or bottled gas
25 (natural or manufactured), water service, fuel oil or
26 telecommunications service to collect from the purchaser, for
27 the use of the County, the tax levied hereby at the time of
28 collecting the selling price charged for each transaction and
29 to report and pay over, on or before the fifteenth (15th) day
30 of each calendar month, to the Orange County Comptroller, all
31 such taxes collected during the preceding calendar month. It
32 shall be unlawful for any seller to collect a price of any
33 sale of electricity, metered or bottled gas (natural or
34 manufactured), water service, fuel oil or telecommunications
35 service without, at the same time, collecting the tax levied
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1 hereby in respect of such sales, unless such seller shall
2 elect to assume and pay such tax without collecting the same
3 from the purchaser. Any seller failing to collect such tax
4 at the time of collecting the price of any sale, where the
5 seller has not elected to assume and pay such tax, shall be
6 liable to the County for the amount of such tax in like
7 manner as if the same had actually been paid to the seller.
8 The seller shall not be liable for the payment of tax on
9 uncollected bills until such bills have been duly paid by the
10 purchaser.

11 SECTION 6. MAINTENANCE OF RECORDS AND INSPECTION BY
12 COUNTY. Each and every seller of electricity, metered or
13 bottled gas (natural or manufactured), water service, fuel
14 oil and telecommunications service shall keep complete
15 records showing all sales in the unincorporated area of
16 Orange County of such commodities or services, which records
17 shall show the price charged upon each sale, the date
18 thereof, and the date of payment thereof, and the date such
19 tax was remitted to the County. Additional records shall be
20 maintained as necessary to substantiate sales and tax
21 collected. Such records (including those records stored on
22 computer or other electronic media) shall be kept open for
23 inspection and audit by the duly authorized agents of Orange
24 County during business hours on all business days, and such
25 duly authorized agents shall have the right, power, and
26 authority to make such transcripts or copies thereof during
27 such times as they may desire. If any of such records are
28 not kept in the local offices, they shall be made available
29 to the County in the local office within sixty (60) business
30 days of written demand. If the seller fails to provide such
31 records at its local office, or if the County determines that
32 an examination of such records is necessary or appropriate to
33 the performance of the County's duties hereunder, then all
34 travel and maintenance expenses necessarily incurred in
35 making such examination shall be paid by the seller.

1 The County may audit the records of any provider of
2 telecommunications services taxable hereunder. Providers of
3 telecommunications services taxable in accordance with the
4 provisions of this ordinance shall provide to the County,
5 upon sixty (60) days notice, access to all applicable records
6 for such telecommunications service. Such access shall be
7 provided as set forth herein. Any information received by
8 the County or its agent in connection with such
9 telecommunications audit is confidential and exempt from the
10 provisions of Section 119.07(1), Florida Statutes.

11 SECTION 7. FEE ALLOWED TO SELLER FOR COLLECTION AND
12 RECORD KEEPING. For the purpose of compensating the seller
13 of telecommunications service, the seller shall be allowed
14 one percent (1%) of the amount of the tax collected and due
15 to the County in the form of a deduction from the amount
16 collected for remittance. The deduction shall be allowed as
17 compensation for keeping records and collection of the tax
18 and remitting the same.

19 SECTION 8. TAX MAY BE COMPUTED ON AGGREGATE AMOUNT OF
20 SALES. In all cases where the seller of electricity, metered
21 or bottled gas (natural or manufactured) water service, fuel
22 oil or telecommunications service collects the price thereof
23 in monthly periods, the tax hereby levied may be computed on
24 the aggregate amount of sales per purchaser during such
25 period; providing, that the amount of tax to be collected
26 shall be the nearest whole cent to the amount computed.

27 SECTION 9. USE OF PROCEEDS. Collected taxes may be used
28 for both operating and capital expenditures. During the
29 first fiscal year of implementation, collected taxes shall be
30 expended on an approximate percentage basis as follows:

- 31 1. twenty-five (25%) percent shall be used to
32 acquire, operate and maintain parks,
33 environmentally sensitive lands and
34 recreational facilities;
- 35 2. thirty (30%) percent shall be used for law
36 enforcement;

- 1 3. fifteen (15%) percent shall be used for
- 2 community services and social service programs;
- 3 4. fifteen (15%) percent shall be used for
- 4 stormwater management;
- 5 5. five (5%) percent shall be used for
- 6 transportation and transit;
- 7 6. ten (10%) percent shall be held in reserve to
- 8 be allocated and expended as needed.

9 Following the first fiscal year of implementation, taxes may
10 be expended based upon budgetary priorities with the
11 exception that a minimum of \$7,500,000 must be expended
12 yearly for parks, recreation and environmentally sensitive
13 lands.

14 SECTION 10. INTEREST PENALTY FOR LATE PAYMENT. Any
15 seller of electricity, metered or bottle gas (natural or
16 manufactured), fuel oil, water service or telecommunication
17 service failing to remit to the County on or before the
18 fifteenth (15th) day of each calendar month all such taxes
19 levied and collected during the preceding month shall be
20 liable for interest on the unpaid amount at the rate of one
21 percent (1%) per month, not to exceed twelve percent (12%)
22 per annum. This interest shall accrue from the due date
23 until the date such taxes are remitted to the County. Any
24 taxes found to be due to the County from the seller as a
25 result of any audit or examination of records shall bear
26 interest at the above stated rate from the time such taxes
27 were due until such time as they are remitted to the County,
28 provided, however, that the County may settle or compromise
29 any dispute over interest due pursuant to this section as is
30 reasonable under the circumstances.

31 SECTION 11. PENALTY FOR VIOLATIONS. Pursuant to Section
32 125.69, Florida Statutes, any purchaser willfully failing or
33 refusing to pay the tax hereby imposed, where the seller has
34 not elected to assume and pay such tax, and any seller, or
35 any officer, agent, or employee of any seller, willfully
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1 violating the provisions of this ordinance may, upon
2 conviction, be punished by a fine not to exceed Five Hundred
3 Dollars (\$500.00) or by imprisonment for a period not
4 exceeding sixty (60) days, or by other such fines and
5 imprisonment for each and every violation as may be lawfully
6 imposed by a court with jurisdiction. The County may further
7 bring suit to restrain, enjoin, or otherwise prevent the
8 violation of this ordinance, and to collect such unpaid
9 taxes, and shall be entitled to reasonable attorney's fees
10 and costs if it prevails in such suit.

11 SECTION 12. SEVERABILITY. If any provision of this
12 Ordinance or the application thereof to any person or
13 circumstance is held invalid, the invalidity shall not affect
14 other provisions or applications of this Ordinance which can
15 be given effect without the invalid provision or application,
16 and to this end the provisions of this Ordinance are declared
17 severable.

18 SECTION 13. EFFECTIVE DATE. This Ordinance shall take
19 effect as provided by general law.
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