

DIVISION 9. - PUBLIC SERVICE TAX⁴

Footnotes:

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Editor's note— Ord. No. 91-17, §§ 1—11, approved Aug. 6, 1991, not specifically amendatory of this Code, has been codified as div. 9, §§ 17-235—17-245, of this article at the discretion of the editor.

Sec. 17-235. - Short title.

This article shall be known as the "Orange County Public Service Tax Ordinance."

(Ord. No. 91-17, § 1, 8-6-91; Ord. No. 98-33, § 1, 11-10-98)

Sec. 17-236. - Imposition of tax.

- (a) Except as exempted by section 17-238, there is hereby levied by the county within the unincorporated area of the county a public service tax upon each purchase of electricity, metered natural gas, metered or bottled gas (liquefied petroleum or manufactured), and water service at a rate of ten (10) percent of the payments received by the seller of the taxable item or service from the purchaser for the purchase of such item or service. Purchase of electricity means the purchase of electric power by a person who will consume it within the unincorporated area of county.
- (b) Except as exempted by section 17-238, there is hereby levied by the county within the unincorporated area of the county a public service tax upon each purchase of fuel oil at a rate of four cents (\$0.04) per gallon.
- (c) The tax shall not be applied against any fuel adjustment charge, and such charge shall be stated separately on each bill. The term "fuel adjustment charge" means all increases in the cost of utility services to the ultimate consumer resulting from an increase in cost of fuel to the utility subsequent to October 1, 1973.
- (d) Subject to the provision of section 17-238, the tax shall in every case be paid by the purchaser of the taxable item to the seller of the taxable item at the time of paying the charge therefore.
- (e) Subject to the provision of section 17-238, the tax shall in every case be paid by the purchaser of the taxable item to the seller of the taxable item at the time of paying the charge therefor.

(Ord. No. 91-17, § 2, 8-6-91; Ord. No. 98-33, § 1, 11-10-98; Ord. No. 2003-13, § 1, 9-16-03)

Sec. 17-237. - Reserved.

Editor's note— Ord. No. 98-33, § 1, adopted Nov. 10, 1998, repealed § 17-237, which pertained to the date of application and derived from Ord. No. 91-17, § 3, adopted Aug. 6, 1991.

Sec. 17-238. - Exemptions and exclusions from payment of tax; certification.

- (a) Purchases by the following entities are declared to be exempt from payment of the tax imposed hereby: the United States Government, the State of Florida, all counties, school districts, and municipalities of the State of Florida, public bodies exempted by law or court order and any other public body as defined in F.S. § 1.01. In addition, the following purchases are declared to be exempt from the tax imposed hereby: the purchase of any taxable item by any recognized church within the state for use exclusively for church purposes; the purchase of natural gas or fuel oil by a public or private utility, either for resale or for use as fuel in the generation of electricity, or the purchase of fuel oil or kerosene for use as an aircraft engine fuel or propellant or for use in internal combustion engines.
- (b) The purchase of metered or bottled gas (natural, liquefied petroleum or manufactured) or fuel oil for agricultural purposes is exempt from the public service tax. For purposes of this exemption, "agricultural purposes" means bona fide farming, pasture, grove, or forestry operations, including horticulture, floriculture, viticulture, dairy, livestock, poultry, bee and aquaculture.
- (c) The board of county commissioners finds that Zellwood Cooperative, Inc., a nonprofit corporation or cooperative association organized under F.S. ch. 617, satisfies the criteria set forth in F.S. § 166.231(5). Therefore, taxable items purchased by it are exempt from the tax imposed by this division as allowed by F.S. § 166.231(5).
- (d) Any purchaser who claims an exemption from the public service tax, pursuant to this section, shall certify to the seller that he or she qualifies for the exemption. Such certification applies to purchases made on or after the date such certification is made to the seller. A seller accepting the certification required by this subsection is relieved of the obligation to collect and remit tax. A governmental body that is exempt from the tax authorized by this section shall not be required to furnish such certification, and a seller is not required to collect tax from such an exempt governmental body.

(Ord. No. 91-17, § 4, 8-6-91; Ord. No. 93-16, § 1, 7-6-93; Ord. No. 98-33, § 1, 11-10-98; Ord. No. 2000-05, § 1, 3-7-00; Ord. No. 2003-13, § 2, 9-16-03)

Sec. 17-239. - Collection and remittance.

- (a) It shall be the duty of every seller of electricity, metered natural gas, metered or bottled gas (liquefied petroleum or manufactured), water service or fuel oil to collect from the purchaser, for the use of the county, the tax levied hereby at the time of collecting the selling price charged for each transaction and to file a return and pay over, on or before the twentieth (20th) day of each calendar month, to the county comptroller, all such taxes collected during the preceding calendar month.
- (b) It shall be unlawful for any seller to collect a price of any sale of electricity, metered natural gas, metered or bottled gas (liquefied petroleum or manufactured), water service or fuel oil without, at the same time, collecting the tax levied hereby in respect of such sales, unless such seller shall elect to assume and pay such tax without collecting the same from the purchaser. Except as provided by F.S. §§ 166.233 and 166.234, any seller failing to collect such tax at the time of collecting the price of any sale, where the seller has not elected to assume and pay such tax, shall be liable to the county for the amount of such tax as provided by general law. The seller shall not be liable for the payment of tax on uncollected bills until such bills have been duly paid by the purchaser.

- (c) Notwithstanding any other provision of this section, in the event the total amount of tax anticipated to be collected within a calendar quarter does not exceed one hundred twenty dollars (\$120.00), the seller of such service may, with the written authorization of the county comptroller, remit the taxes collected during such calendar quarter to the county quarterly. In such case, the tax shall be due on or before the twentieth (20th) day of the month following the end of the calendar quarter in which the taxes were collected.

(Ord. No. 91-17, § 5, 8-6-91; Ord. No. 98-33, § 1, 11-10-98; Ord. No. 2003-13, § 3, 9-16-03)

Sec. 17-240. - Incorporation of general law.

- (a) The provisions of F.S. §§ 166.231, 166.233, and 166.234, as they may be amended or replaced from time to time, and any other applicable general law shall govern the following with respect to the tax levied under this division and the revenues derived therefrom:
- (1) Initiation and processing of claims of exemptions;
 - (2) Recordkeeping by sellers;
 - (3) Overpayments, refunds, and credits;
 - (4) Deficiencies, interest, and penalties;
 - (5) Inspection and audit of seller records by the county;
 - (6) Protests, contests, and appeals by sellers;
 - (7) Exemption of seller records from public disclosure and public records laws;
 - (8) Fees to be deducted and retained by sellers;
 - (9) Provision of lists of streets, street addresses, and other data pertinent to collection and remittance of the tax;
 - (10) Enforcement and time limits imposed upon enforcement of the tax;
 - (11) All other matters of collection, remittance, administration, and enforcement of the tax not otherwise specified under this division.
- (b) If any portion of this division is inconsistent with any existing or future general law, the provisions of general law shall govern and shall supersede this division to the extent of the inconsistency.

(Ord. No. 91-17, § 6, 8-6-91; Ord. No. 98-33, § 1, 11-10-98)

Sec. 17-241. - Rules and procedures.

The Orange County Comptroller is authorized and directed to promulgate and publish such rules and procedures from time to time as the comptroller may determine to be necessary or useful in the collection, remittance, administration, and enforcement of the tax levied under this division. Such rules and procedures shall be binding upon and enforceable against all sellers and other persons subject to the provisions of this division, but only if and to the extent that such rules and procedures are not inconsistent with general law or this division.

(Ord. No. 91-17, § 7, 8-6-91; Ord. No. 98-33, § 1, 11-10-98)

Sec. 17-242. - Computation on aggregate amount of sales.

In all cases where the seller of electricity, metered natural gas, metered or bottled gas (liquefied petroleum or manufactured), water service or fuel oil collects the price thereof in monthly periods, the tax hereby levied may be computed on the aggregate amount of sales per purchaser during such period; providing, that the amount of tax to be collected shall be the nearest whole cent to the amount computed.

(Ord. No. 91-17, § 8, 8-6-91; Ord. No. 98-33, § 1, 11-10-98; Ord. No. 2003-13, § 4, 9-16-03)

Sec. 17-243. - Use of proceeds.

Collected taxes may be used for both operating and capital expenditures. During the first fiscal year of implementation, collected taxes shall be expended on an approximate percentage basis as follows:

- (1) Twenty-five (25) percent shall be used to acquire, operate and maintain parks, environmentally sensitive lands and recreational facilities;
- (2) Thirty (30) percent shall be used for law enforcement;
- (3) Fifteen (15) percent shall be used for community services and social service programs;
- (4) Fifteen (15) percent shall be used for stormwater management;
- (5) Five (5) percent shall be used for transportation and transit;
- (6) Ten (10) percent shall be held in reserve to be allocated and expended as needed.

Following the first fiscal year of implementation, taxes may be expended based upon budgetary priorities, except that a minimum of seven million five hundred thousand dollars (\$7,500,000.00) must be expended yearly for parks, recreation and environmentally sensitive lands and a portion of the tax collected, not to exceed three (3) percent, shall be deducted by the comptroller for costs of administration audit, enforcement and collection of the tax.

(Ord. No. 91-17, § 9, 8-6-91; Ord. No. 98-33, § 1, 11-10-98)

Sec. 17-244. - Interest.

Any seller of electricity, metered natural gas, metered or bottled gas (liquefied petroleum or manufactured), fuel oil or water service failing to remit to the county as prescribed in section 17-239 of this division shall be liable for interest on the delinquent tax at the rate of one (1) percent per month. This interest shall accrue from the due date until the date such taxes are remitted to the county.

(Ord. No. 91-17, § 10, 8-6-91; Ord. No. 98-33, § 1, 11-10-98; Ord. No. 2003-13, § 5, 9-16-03)

Sec. 17-245. - Penalty.

Any seller of electricity, metered natural gas, metered or bottled gas (liquefied petroleum or manufactured), fuel oil or water service failing to remit to the county as prescribed in section 17-239 of this division shall be liable for penalties at a rate of five (5) percent of the delinquent tax per month not to exceed a total penalty of twenty-five (25) percent. In no event will the penalty for failure to file a return be less than fifteen dollars (\$15.00). Sellers filing fraudulent returns or willfully attempting to evade payment of the tax shall be liable for a specific penalty of one

hundred (100) percent of the tax. In addition the county may bring suit to restrain, enjoin, or otherwise prevent the violation of this division, and to collect such unpaid taxes, and shall be entitled to reasonable attorney's fees and costs if it prevails in such suit.

(Ord. No. 91-17, § 11, 8-6-91; Ord. No. 98-33, § 1, 11-10-98; Ord. No. 2003-13, § 6, 9-16-03)

Secs. 17-246—17-260. - Reserved.