

CHAPTER 3.24

OCCUPATION TAXES

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3.24.010 Assessments; Generally.

An occupation tax is hereby levied on the occupations, trades, or agencies within the city described in this chapter, and it shall be unlawful for any person to exercise, carry on or engage in any of such occupations, trades, or agencies in the city without paying the occupation tax. (Ord. 15448 §1; March 5, 1990: P.C. §4.08.010; Ord. 3489 §26-101; July 6, 1936).

3.24.020 Vending Machines.

There is hereby levied upon the business of every person engaged in the business of vending merchandise by means of an automatic merchandise vending machine an annual occupation tax based on the price per unit of the merchandise vended therefrom, as follows:

- (a) Machines vending merchandise at one cent per unit, fifty cents.
- (b) Machines vending merchandise at five cents to twenty cents per unit, two dollars.
- (c) Machines vending merchandise at twenty-five cents or more per unit, four dollars.
- (d) Machines vending merchandise of multiple unit value. Where a single automatic merchandise vending machine provides for the vending of merchandise for unit prices as set forth in two or more of the above classifications, the annual occupation tax to be paid for each machine shall be four dollars per unit. (Ord. 15448 §2; March 5, 1990: P.C. §4.12.010; Ord. 9587 §1; September 16, 1968: Ord. 8030 §1; May 6, 1963: Ord. 4238 §1, as amended by Ord. 7445; April 24, 1961).

3.24.030 Vending Machines; Statement Filed with City Clerk.

Every person operating, conducting, or engaged in the business of vending merchandise by means of automatic vending machines shall annually, between the first and tenth days of June, file with the City Clerk a sworn statement in writing stating the number of the machines owned by such person in this city, the location of each machine, the type of merchandise vended by or through each machine, and the unit sales price of the merchandise, and shall thereupon pay the tax herein provided to the City Treasurer. (Ord. 15448 §3; March 5, 1990: P.C. §4.12.020: Ord. 4238 §2; May 12, 1947).

3.24.040 Issuance of Certificate; Tag or Sticker.

Upon the payment of the occupation tax herein provided for and the presentation to the City Clerk of the receipt therefor, together with the sworn statement hereinbefore required, the City Clerk shall issue a certificate to the person taxed, which certificate shall at all times be kept posted in a conspicuous place in the business establishment of the taxpayer. The City Clerk shall also issue a certificate in the form of a tag or sticker for each such machine upon which the tax has been paid, which tag or sticker shall at all times be kept attached to or posted upon such machine. On the installation of any new machine or a change in the location of a machine already operating, it shall be the duty of any such owner or operator to notify the City Clerk in writing of any such installation or change and to procure a proper tag or sticker therefor. (Ord. 15448 §4; March 5, 1990: P.C. §4.12.040: Ord. 4238 §4; May 12, 1947).

3.24.050 Unlawful to Mutilate, Destroy or Remove Tag or Sticker.

It shall be unlawful for any person, except the owner thereof, to mutilate, destroy or remove any such tag or sticker from any such machine. (Ord. 15448 §5; March 5, 1990: P.C. §4.12.050: Ord. 4238 §5; May 12, 1947).

3.24.060 Restriction of Sales.

Nothing in this chapter shall be construed to permit the operation of any machine consisting of, or constituting a game of chance, or to permit the unlawful vending of merchandise, the sale of which is prohibited to minors or to any class of minors under state law or by city ordinance. Nothing in this chapter shall be construed to eliminate the necessity of permits or of licenses or of certificates of registration as may otherwise be lawfully required for the vending of any merchandise. (Ord. 15448 §6; March 5, 1990: P.C. §4.12.060: Ord. 7630 §1; January 2, 1962: Ord. 4238 §6; May 12, 1947).

3.24.080 Telecommunication Occupation Tax.

Commencing October 1, 2010, there is hereby levied upon every person, firm, partnership, corporation, or association engaged in the business of offering, providing or selling telecommunication equipment or telecommunication services to the public for hire in the City of Lincoln an occupation tax of six percent (6%) on (1) the gross receipts resulting from any telecommunication services and charges to a customer for which telecommunication services are provided; and (2) the gross receipts resulting from any sale of telecommunication equipment.

(a) Telecommunication services as used in this ordinance is defined as the provision of all communication services and equipment provided in connection therewith, operable by the general public as opposed to the employees of a telecommunications business only, using electromagnetic wire, fiber optics or radio waves to control or direct the sending and receiving of messages at a

distance, and includes transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to any geographic location, or between or among geographic locations, and any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing, without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added;

(b) Telecommunication equipment as used in this ordinance is defined as any communication device sold for the purpose of providing or as part of a telecommunication service as defined in subsection (a) of this section, including but not limited to, phones, mobile phones, cellular phones, smart phones, pagers, and all like devices. Telecommunications equipment shall not include computers, routers, hubs, lamp and key systems or private branch exchanges.

(c) Telecommunication services which are subject to this occupation tax includes but shall not be limited to:

(1) Basic local exchange services as defined in Neb. Rev. Stat. § 86-105;

(2) Inter-exchange services as defined in Neb. Rev. Stat §86-111, provided that such inter-exchange service either (a) originates from an end user within the city or (b) terminates with an end user within the city, and is charged to a service address within the city regardless of where the charges are actually paid;

(3) Commercial mobile services as defined in 47 U.S.C. §332(d)(1) which include any radio or similar communication services provided pursuant to license or authority granted by the Federal Communications Commission, charged to a service address within the city regardless of where the charges are actually paid, including cellular, radio paging, and mobile radio services;

(4) Any other similar telecommunication services involving any electronic or electromagnetic transmission of messages or any other communications originating and terminating in the State of Nebraska and charged to a service address in the City of Lincoln, regardless of where the charges are actually paid;

(5) Any other telecommunication services that are a necessary component of the services provided, regardless of whether the services or fees are required by federal, state or local authorities or provided by the telecommunication business including, but not limited to, universal service fund fees imposed under Neb Rev. Stat. §§ 86-317 et seq., installation, maintenance, any premise services, service connections, late payment fees, and equipment leasing;

(6) Ancillary services and charges that are associated with or incidental to the provision of telecommunication services including, but not limited to conference bridging, detailed telecommunications billing, directory assistance, vertical service, or voice mail services; and

(7) Telephone cards, phone cards, calling cards, rechargeable cards, telephone tokens and any other method or device used in purchasing prepaid minutes, prepaid telecommunication service, or pay-as-you-go services.

(d) Gross receipts shall not include any services and charges as follows:

(1) For interstate telecommunications between persons in this city and persons outside of this state;

(2) For local carrier access charges, transmission facilities and switching services provided to telecommunications companies;

(3) From accounts charged to the United States government or any of its departments, or the State of Nebraska, or any of its agencies, subdivisions, or departments.

(4) Any cable television services regulated under Chapter 5.15 of the Lincoln Municipal Code.

(5) Any charges or services prohibited from being taxed by the Internet Tax Freedom Act.

(6) Any sales taxes imposed by the State of Nebraska pursuant to Neb. Rev. Stat. § 77-2703.

(7) Any surcharges required by Neb. Rev. Stat. §§ 86-313 or 86-457.

(e) The seller of telecommunication services or equipment may itemize, as an add-on charge, the tax levied on a bill, receipt, or other invoice to the purchaser, but each seller engaged in selling telecommunication services or equipment shall remain liable for the tax imposed by this section.

No part or portion of the tax provided for in this chapter shall be levied upon or assessed against or taken from any such gross receipts so excepted from the provisions hereof. (Ord. 19587 §1; August 1, 2011: prior Ord. 19454 §1; September 27, 2010: Ord. 19410 §1; July 19, 2010: Ord. 19296 §1; August 24, 2009: Ord. 17898 §1; August 13, 2001: Ord. 16424 §1; July 19, 1993: Ord. 16191 §1; August 17, 1992: Ord. 15680 §1; August 13, 1990: Ord. 15448 §8; March 5, 1990: P.C. §4.24.010: Ord. 3489 §26-401; July 6, 1936: and P.C. §4.24.020(part) Ord. 12344 §1; July 24, 1978; Ord. 3489 §26-402, as amended by Ord. 4629; August 29, 1949).

3.24.090 Telecommunication Occupation Tax; Credit; Payment.

On or before the last day of each and every month, any company providing telecommunications equipment or services shall pay to the City of Lincoln six percent (6%) of the gross receipts as provided in Section 3.24.080 from the preceding month as an occupation tax; provided that such business shall be entitled to a credit for any occupation tax, or other similar tax based on gross receipts, satisfactorily documented or verified as paid to any other jurisdiction upon any gross receipts taxed herein. All deferred payments shall draw interest at the rate of one percent (1%) per month and shall be compounded quarterly. After default for six months, a penalty of five percent (5%) shall be added in addition to the interest charges. (Ord. 19410 §1; July 19, 2010: prior Ord. 19296 §2; August 24, 2009: 17898 §2; August 13, 2001: Ord. 16191 §2; August 17, 1992: Ord. 15680 §2; August 13, 1990: Ord. 15448 §9; March 5, 1990: P.C. §4.24.020(part): Ord. 12344 §1; July 24, 1978; Ord. 3489 §26-402, as amended by Ord. 4629; August 29, 1949).

3.24.100 Telecommunication Occupation Tax; Reports; Contents.

On or before the last day of each month, any company providing telecommunications equipment or services shall submit to the City Treasurer a full, complete and detailed statement of the income and gross receipts for the preceding month, omitting any exemptions provided for in Section 3.24.080 hereof, and said statement shall be duly verified and sworn to by the officer or officers in charge of the business. All such businesses shall at any reasonable times during business hours permit the city, through its officers, agents or representatives, to inspect the books and records of any such business for the purpose of verifying such report or reports. In the event the amount owed as a result of the findings of an audit or inspection is in excess of three percent (3%) of the telecommunication occupation taxes paid by the business during the audited period, the business shall pay City's out-of-pocket expenses associated with such audit.

Access to records and other materials shall not be denied on the basis that said records and materials contain trade secret, proprietary or confidential information; provided, however, that the telecommunication business may require that the City enter into a reasonable confidentiality agreement prior to inspecting any records or material that the business reasonably believes contains trade secrets, proprietary or confidential information which the public release thereof would harm or jeopardize the business's competitive position. (Ord. 19454 §2; September 27, 2010: prior Ord.

19410 §3; July 19, 2010: Ord. 16191 §3; August 17, 1992: Ord. 15448 §10; March 5, 1990: P.C. §4.24.030: Ord. 12344 §2; July 24, 1978: Ord. 3489 §26-403, as amended by Ord. 4629; August 29, 1949).

3.24.140 Payment to Treasurer; Receipt; Record.

The occupation taxes levied and provided for by this chapter shall be paid to the City Treasurer who shall, upon payment thereof, give a receipt, properly dated, and specifying the person paying the same, and amount thereof, and the time for which the same takes effect. The Treasurer shall keep a record of the receipts so issued. (Ord. 15448 §14; March 5, 1990: P.C. §4.08.210: Ord. 3489 §26-119; July 6, 1936).

3.24.150 Tax, When Due; Treasurer to Collect.

It is hereby made the duty of any person desiring to exercise, carry on or engage in any occupation within the provisions of this chapter, to pay to the City Treasurer the amount specified for the occupation tax, as provided for in this chapter. The amount of the occupation tax shall be due and payable to the City Treasurer immediately after such person shall begin business in any occupation within the provisions of this chapter. Any person, firm, partnership, corporation, or association affected by the telecommunications occupation tax may make written request of the City Finance Department to issue a written interpretation as to applicability or non-applicability of the occupation tax to particular sales of telecommunication equipment or telecommunication services. Any responses shall be made available to the public for review in order to inform all interested parties of the interpretation provided. (Ord. 19410 § 4; July 19, 2010: prior Ord. 15448 §15; March 5, 1990: P.C. §4.08.220: Ord. 3489 §26-120; July 6, 1936).

3.24.160 City Attorney; Enforce Collection.

The City Attorney may bring suit in the name of the city against any person, corporation, firm, or association in any court of competent jurisdiction for the amount of such tax levied by this chapter upon the failure of such person, corporation, firm, or association to pay the same as herein provided. (Ord. 19410 §5; July 19, 2010: P.C. §4.08.230: Ord. 3489 §26-121; July 6, 1936).

3.24.170 Tax Credited to Fund Designated by Council.

The money realized from the collection of the occupation taxes provided for in this chapter shall be placed to the credit of the General Fund or such other fund or funds as designated by the City Council. (Ord. 15448 §17; March 5, 1990: P.C. §4.08.240: Ord. 3489 §26-122; July 6, 1936).

3.24.180 Theaters.

There is hereby levied upon the business of every person engaged in the business of operating or conducting any hall, theater, or place furnishing motion picture, dramatic, vaudeville, or theatrical entertainment of any kind as follows: \$100.00 for each such hall, theater, or place seating less than 600 patrons; \$300.00 for each such hall, theater, or place seating 600 patrons or more, but less than 1,000; and \$500.00 for each such hall, theater, or place seating 1,000 patrons or more.

Such occupation tax shall be \$100.00 for drive-in theaters having less than 600 parking spaces; \$300.00 for each drive-in theater having more than 600 but less than 1,000 parking spaces; and \$500.00 for each such drive-in theater having 1,000 or more parking space. (Ord. 15478 §2; March 5, 1990: P.C. §4.16.020: Ord. 12273 §1; May 8, 1978: Ord. 4353 §2, as amended by Ord. 4805; July 3, 1950).

3.24.190 Penalty for Violations.

Any person upon whom a duty is placed by this chapter who shall fail, neglect, or refuse to perform such duty or who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$100.00. Each day that a violation of this chapter continues shall constitute a separate and distinct offense and shall be punishable as such. (Ord. 15448 §18; March 5, 1990: P.C. §4.12.080: Ord. 7630 §2; January 2, 1962: Ord. 4238 §8; May 12, 1947).